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REPORT ON THE IMPACT OF THE 1983 SEXUAL ASSAULT LEGISLATION IN LETHBRIDGE, ALBERTA

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The views expressed herein are solely those of the author
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CONTENTS

EXECUTIVE SUMMARY ix

ACKNOWLEDGEMENTS xii

1.0 INTRODUCTION 1

1.1 Background 1
1.2 Study Issues 2
1.3 Plan of the Report 2

2.0 LITERATURE REVIEW 3

2.1 Introduction 3

2.2 Sexual assault provisions of Bill C-127 4
2.2.1 Designation of Offence 4
2.2.2 Spousal Immunity 5
2.2.3 Corroboration 5
2.2.4 Recent Complaint 6
2.2.5 Previous Sexual Conduct and Reputation 6
2.2.6 Consent 7
2.2.7 Provisions For Sentencing 8

2.3 Summary of Substantive, Evidentiary and Procedural Changes in Bill C-127 8

2.4 Objectives 9

2.5 Recent Research Relating to the Study 9

3.0 DESIGN OF THE EVALUATION 12

3.1 Introduction: Evaluating Legislation 12

3.2 Methodology 15
3.2.1 Overview 15
3.2.2 Evaluation Research: Outcome versus Process 15

3.2.3 Evaluating Legislation 16

3.3 Evaluation Plan for Bill C-127 18
  3.3.1 Overview 18
  3.3.2 Internal and External Validity as it Applies to Bill C-127 19

3.4 Data Sources 20
  3.4.1 File Data 20
  3.4.2 Interviews 24
  3.4.3 Court Monitoring 25

4.0 RESPONSES TO REPORTS OF SEXUAL ASSAULT INCIDENTS 26

4.1 Police Processing 26
  4.1.1 Police Classification of Complaints 26
  4.1.2 Founded or Unfounded 27
  4.1.3 Evidence of "Bad Character" 27
  4.1.4 Charges Laid 29
  4.1.5 Interviews With Complainant 31
  4.1.6 Investigation Terminated at the Police Level 33
  4.1.7 Summary 34

4.2 Prosecution and Court Proceedings 35
  4.2.1 Charges Proceeded With or Dropped at Prosecution Level 35
  4.2.2 Trial and Disposition 36
  4.2.3 Appeals 39
  4.2.4 Summary 39

4.3 Profile of Complainants 43
  4.3.1 Gender 43
  4.3.2 Age 43
  4.3.3 Relationship to Accused 45
  4.3.4 Summary 46

4.4 Profile of Accused 46
  4.4.1 Gender 46
  4.4.2 Age 47
  4.4.3 Marital Status 48
  4.4.4 Previous Criminal Record 49
  4.4.5 Occupational Status 49
  4.4.6 Summary 50

4.5 Offences 50
  4.5.1 Type of Offence 50
  4.5.2 Disclosure 53
  4.5.3 Circumstances of Offence 57
  4.5.4 Physical Force and Injury 58
  4.5.5 Use of Alcohol 61
  4.5.6 Summary 62

4.6 Nature of Contact With Sexual Assault Centre 63

4.7 Nature of Reports to Police 64

4.8 Referred to Centre From Another Agency 67

5.0 IMPACTS OF BILL C-127 ON PRACTICES, OUTCOMES AND ATTITUDES 68

5.1 Introduction 68

5.2 Changes in Reporting and Processing 68
  5.2.1 The Typical Assault 68
  5.2.2 Changes in Reporting Over Time 69
  5.2.3 Charges 69
  5.2.4 Proceeding With Prosecution 69
  5.2.5 Polygraphs 70
  5.2.6 Plea Bargaining 70
  5.2.7 Convictions 71
  5.2.8 Length of Sentences 71

5.3 Change in Designation 72

5.4 Complainant's Character and Previous Sexual History 73

5.5 Recent Complaint 74

5.6 Corroboration 75

5.7 Consent 76

5.8 Spousal Immunity 76

5.9 Changes in the Courtroom 77

5.10 Attitudes Toward Bill C-127 77

5.11 Media 78

6.0 NATURE OF THE VICTIM'S EXPERIENCE 79

6.1 Specialized Training for Agency Personnel 79
6.2 The Victim's Experience in the Criminal Justice System 80
6.3 Court Monitoring 81
    6.3.1 Analysis by Theme 104
6.4 Interviews With Victims 107
    6.4.1 First Case 107
    6.4.2 Second Case 109
    6.4.3 Third Case 111
    6.4.4 Fourth Case 113
    6.4.5 Fifth Case 114
6.5 Other Influences on the Processing of Sexual Assault Cases 116

7.0 SUMMARY 117

ANNEXES

NOTE: *The following table of contents lists all of the Appendices contained in the original version of this Report. To save duplicating expenses Appendix A only has been reproduced in the present published version of the Report. Complete copies of all the Appendices are available from the Department of Justice on request.*

Annex A Research Reports from the Sexual Assault Evaluation Program
Annex B Lethbridge Sexual Assault - Sentencing Information
Annex C Newspaper Clippings
Annex D Data Collection Instructions

BIBLIOGRAPHY 122

FIGURES

Figure 1 16
Figure 2 17
Figure 3 Adult -- Prereform Report -- Dispositions 40
Figure 4 Adult -- Post Reform Reports -- Dispositions 41

TABLES

Table 1 Initial Classification of Sexual Offence by Police (Pre and Post Reform Data) 26
Table 2 Police Founded or Unfounded Complaint by Prepost 27
Table 3 Evidence of Bad Character (Pre and Post Reform Data) 28
Table 4 Nature of Bad Character (Pre and Post Reform Data) 28
Table 5 Was Charge Laid (Pre and Post Reform Data) 29
Table 6 Initial Charges Laid by Police (Pre and Post Reform Data) 29
Table 7 Elapsed Time of Charge Since Offence Reported (Pre and Post Reform Data) 30
Table 8 Order in which Police Contacted (Pre and Post Reform Data) 30
Table 9 Did Accused Admit Guilt to Police (Pre and Post Reform Data) 31
Table 10 Number of Interviews Complainant had with Police (Pre and Post Reform Data) 32
Table 11 Complainant Able to Identify Suspect (Pre and Post Reform Data) . . 32
Table 12 Suspect Apprehended (Pre and Post Reform Data) 33
Table 13 Investigation Terminated at Police Level (Pre and Post Reform Data) 33
Table 14 Investigation Terminated by Police (Pre and Post Reform Data) 34
Table 15 Investigation Terminated at Complainants Request (Pre and Post Reform Data) 34
Table 16 Were Charges Proceeded Consistent (Pre and Post Reform Data) . . . 35
Table 17 Was Case Eventually Stayed by Crown Prosecutor (Pre and Post Reform Data) 36
Table 18 Accused Committed to Trial (Pre and Post Reform Data) 36
Table 19 Trial by Judge or Judge and Jury (Pre and Post Reform Data) 37
Table 20 What was Verdict (Pre and Post Reform Data) 37
Table 21 Conviction on Sexual Offence (Pre and Post Reform Data) 38
Table 22 Filtering out of Charges at the Police/Crown/Court Levels 42
Table 23 Gender of Complainant (Pre and Post Reform Data) 43
Table 24 Complainant's Age (Pre and Post Reform Data) 44
Table 25 Victim Age at Time of Offence (Pre and Post Reform Data) 45
Table 26 Accused-Complainant Relationship (Pre and Post Reform Data) 46
Table 27 Gender of Accused (Pre and Post Reform Data) 47
Table 28 Age of Accused (Pre and Post Reform Data) 48
Table 29 Marital Status of Accused (Pre and Post Reform Data) 48
Table 30 Previous Criminal Record of Accused (Pre and Post Reform Data) . . 49
Table 31 Occupation of Accused (Pre and Post Reform Data) 50
Table 32 Type of Sexual Contact (Pre and Post Reform Data) 51
Table 33 Nonsexual Offence (Pre and Post Reform Data) 52
Table 34 Type of Nonsexual Offence (Pre and Post Reform Data) 52

Table 35 To Whom Complainant First Disclosed Assault (Pre and Post Reform Data) 53
Table 36 When was Disclosure Made (Pre and Post Reform Data) 54
Table 37 When Police Report was Made (Pre and Post Reform Data) 55
Table 38 Offence Reported by Whom (Pre and Post Reform Data) 56
Table 39 Initial Complaint after Assault Made (Pre and Post Reform Data) . . . 56
Table 40 Place of the Offence (Pre and Post Reform Data) 57
Table 41 Place of the Offence (Pre and Post Reform Data) 58
Table 42 Physical Force Used by the Accused (Pre and Post Reform Data) . . . 58
Table 43 Nature of force Used (Pre and Post Reform Data) 59
Table 44 Resistance by Complainant (Pre and Post Reform Data) 59
Table 45 Type of Resistance (Pre and Post Reform Data) 60
Table 46 Any Injuries Suffered by Complainant (Pre and Post Reform Data) . . 60
Table 47 Complainant Attended Medical Facility (Pre and Post Reform Data) 61
Table 48 Use of Alcohol (Pre and Post Reform Data) 62
Table 49 How Soon After Assault Agency Contacted (Pre and Post Reform Data (SAC)) 63
Table 50 Who Reported Offence to Agency (Pre and Post Reform Data (SAC)) 64
Table 51 Offence Reported to Police (Pre and Post Reform Data (SAC)) 64
Table 52 Who Reported Offence to Police (Pre and Post Reform Data (SAC)) 65
Table 53 Report Accepted by Police (Pre and Post Reform Data (SAC)) 66
Table 54 Referral to Centre (Pre and Post Reform Data (SAC)) 67

EXECUTIVE SUMMARY

Introduction

The following report is a synthesis of research conducted in Lethbridge, Alberta, from May to December 1987, as part of an evaluation of Bill C-127 -- "An Act to Amend the Criminal Code in Relation to Sexual Offences and Other Offences Against the Person" (1983). The national study, contracted by the Department of Justice, was done in six Canadian cities (Vancouver, Lethbridge, Winnipeg, Hamilton, Montreal and Fredericton).

A process investigation was combined with an outcome evaluation to detect any evidence of changes in attitudes, bureaucratic practices and victims' experiences as the legislation began to take effect. The outcome evaluation was based on the two years prior to the January 1983, amendments (1981-1982) and the two years afterwards (1984-1985). It used data gathered from police files, files from the Sexual Assault Centre, court monitoring and interviews with key informants (police, prosecutors, defence lawyers, workers at the Sexual Assault Centre, physicians and victims).

Major Findings

In both time periods, most complainants reporting offences to the police were female, although the percentage of male complainants rose in the post reform period. There were substantially more child complainants in the post reform period. In both time periods almost all the accused were male.

- Significantly more of the post reform assaults involved parents or others known to the complainants.

- Three prostitutes complained to police in the post reform period but none in the prereform period.

- The proportion of complainants who reported being assaulted by strangers decreased in the post reform period. Although this difference partly reflects the increased number of child sexual assault cases reported to police after 1983, even adult complainants reported fewer assaults by strangers in the post reform period.

- Juveniles comprised 5.9 per cent of the accused in the prereform period and 4.8 per cent of the accused in the post reform period.

-- More post reform complainants reported assaults that were not stereotypical and more of these cases were being processed through the courts.

-- Offences typically occurred in the home of the accused or the complainant, although more assaults occurred in a public place in the earlier time period.

-- There was a decrease in the percentage of cases involving intercourse in the post reform period, while the percentage of cases involving touching, fondling and grabbing increased.

-- Physical force was used less often in the post reform period and a smaller percentage of complainants were injured in that group. Substantially fewer of them sought medical attention. The most common form of physical force used was grabbing and restraining.

-- Most reports were classified by the police as founded, as opposed to unfounded. This was true for information found in files from both the police and the Sexual Assault Centre, although the rate of founded was slightly higher for the Sexual Assault Centre in the post reform period.

-- The processing of sexual offences in the two time periods is almost identical. There is considerable case attrition in the criminal justice system: a total of 76.0 per cent of the prereform and 75.2 per cent of the post reform cases were filtered out.

-- Most key informants favour Bill C-127 as a substantial improvement over the previous rape legislation.

-- Some policies implemented to deal with sexual assault cases do not result from the legislation, but rather an increased awareness by the public.

-- Personnel dealing with sexual assault victims believe that the victims' experience on the witness stand has improved since the sexual assault law was passed, particularly because of limits on questions about complainants' past sexual history.

-- Specialization by police, crown attorneys, and medical personnel was strongly advocated by most key informants.

-- All six sexual assault trials, monitored during the study resulted in acquittals.

-- Four out of five victims who were interviewed felt they had been treated unfairly by the criminal justice system; three of the five said they would still recommend reporting sexual assaults to the police.

Conclusions

The data provide conflicting evidence as to the impact of Bill C-127. Changes in the post reform period and interviews with key informants suggest that the law has made a difference. However, the filtering of charges between the two time periods and the monitored court cases suggest otherwise.

Although more cases have been processed because of Bill C-127, there is evidence that change is inhibited by former attitudes and practices. Complainants are still being questioned in court about delays in reporting and the importance of corroborative evidence has not decreased in the courts. Cases without "corroboration" and "recent complaint" are being prosecuted, but not successfully.

The police and crown attorneys feel considerable public pressure to take sexual assault cases seriously and it appears that they are doing so. The judiciary must respond to criticism that it feels to support the spirit of Bill C-127.

The fact that the legislation has not solved some problems associated with sexual assault relates not so much to the legislation itself as to its implementation. Victims' trauma can be minimized by reducing the length of time complainants wait for a court appearance. The right of the defence to use a variety of delaying tactics is not consistent with the complainant's need for a speedy hearing. Elimination of preliminary hearings in sexual assault cases would eliminate the long delays. Defence lawyers typically try to find discrepancies between testimony at the preliminary hearing and at trial in order to discredit witnesses. The differences are often trivial and result from time lapse, not dishonesty.

A formal system to provide support services to victims of sexual assault could help alleviate some of their problems. In Lethbridge, such support is minimal and most respondents who provide it wished for more resources. Training is needed at all levels of the system. One individual or position should be responsible for familiarizing victims with prosecution and trial procedures and accompanying complainants to court.

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The success of the research was dependent on the cooperation and efforts of a number of different agencies, organizations and professionals. The shared concern about sexual abuse by project participants was instrumental to the successful completion of the project.

1.0 INTRODUCTION

1.1 Background

Over the past two decades many groups have criticized the legal/judicial treatment of sexual offences. These concerns centred around the degradation of victims and since most victims have been female, the apparent institutionalized denial of women's rights under the law. Particular problems with the law included the definition of rape as a crime which could only be perpetrated upon women and yet could not apply to a spouse, the treatment of victims by the criminal justice system which sometimes seemed to be more concerned with the complainants' credibility than with offenders' guilt, and the application of unique procedural and evidentiary standards to sexual offences.

Bill C-127 - "An Act to Amend the Criminal Code in Relation to Sexual Offences and Other Offences Against the Person" - proclaimed on January 4, 1983, represents a comprehensive response to these and other concerns with the rape law. Included in this new legislation were significant changes such as:

- the reclassification of the crime of rape to three levels of sexual assault (based on aggravating factors);
- guidelines regarding the evidence required for a conviction;
- disqualification of evidence on the complainant's background which is not pertinent to the case;
- clearer identification of which groups are protected and which are liable;
- specifics on sentencing; and
- other important changes to the rules of evidence.

Department of Justice Canada commissioned studies in six Canadian cities (Vancouver, Lethbridge, Winnipeg, Hamilton, Montreal and Fredericton) to evaluate the impact of this major legislation. This report presents the findings for Lethbridge, Alberta.

1.2 Study Issues

The study issues according to the terms of reference laid down by the Department of Justice were as follows:

- To describe how reported sexual offences are processed through the various levels of the criminal justice system, including outcomes of cases.
- To determine whether the law has had an impact on the volume and types of cases, as well as on attributes of victims and offenders.
- To examine the impact of the law reform on criminal justice practitioners and others working with victims of sexual assault with regard to practices, procedures, and attitudes.
- To describe the nature of the sexual assault victim's experiences within the criminal justice system and other agencies.
- To discover any unintended consequences of the law reform on victims and on the criminal justice system.

1.3 Plan of the Report

This report on a detailed review of the criminal justice system in Lethbridge, Alberta, is divided into seven sections and includes a review (Chapter 2) of the literature, providing background and rationale for the changes to the Criminal Code, as well as salient features of the legislation. This provides a basis for the design of the evaluation, reviewed in the third chapter. We also review the data quality and the basis for evaluating whether the new legislation has the intended outcomes. The fourth chapter describes the response to reports of sexual assault incidents and the fifth looks at the impact of Bill C-127 on practices, outcomes and attitudes. The sixth section describes the nature of the victim's experience with the criminal justice system. Section seven outlines problems and improvements suggested by practitioners and provides a summary of findings.

2.0 LITERATURE REVIEW

2.1 Introduction

Rape law as it existed prior to 1983 appeared to demonstrate an inherent distrust of rape victims. The adversarial nature of the trial process with the concomitant uncertainty of one person's word against another had implications emphasized in sexual assault cases. The system sometimes seemed to show more concern over complainant's credibility than over the culpability of the accused. The majority of reported offences adhered to specific stereotypes, perpetuating the definitions traditionally applied to "real" or "classic" rape: that of the sudden attack by a stranger appearing out of the bushes. Numerous studies done over the past decade have shown that the most commonly committed sexual assaults do not fit the stereotype (See Amir, 1971; Bart, 1975; Finkelhor, 1979). Indeed the offence is really the anomalous one.

Most assaults are found to take place between people who know each other and in many cases are intimates and family members. Yet, relative to the stereotypical offences, they have had lower reporting rates. Victims find it difficult to define friends and family members as rapists. This fact, exacerbated by guilt victims feel as a result of cultural assumptions surrounding rape, has kept these more common assaults inconspicuous and out of official statistics. Victims have absorbed the blame for these more commonly occurring assaults. This has helped maintain society's belief that the assault is the only real offence and that women themselves have provoked other assaults. A study by Gunn in 1982-1983 demonstrated that victims themselves internalized the socially acceptable standards of evaluating sexual offences and typically reported offences they deemed appropriate.[1] These offences include factors such as attack by a stranger, visible injuries, and blaming the assailant. These circumstances reflect the cultural assumptions that are more readily perceived as authentic by others as well as the victim.

Many critics of the justice system argued that the previous legislation, coupled with prevailing societal attitudes, produced three important effects. First, many sexual assaults went unreported. Second, cases were filtered from the system.[2] Third (as Clark and Lewis (1977) discovered), although the Criminal

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[1] See also Kinnon (1981), Brickman and Briere (1984) and Bart and O'Brien, (1985) for research on the under-reporting of sexual assaults.

[2] See Minch (1984) and Gunn and Minch (1988) for a description of this filtering process.

Code provided severe penalties for rape, sentencing did not reflect the serious nature of the offence in the relatively few convictions obtained.
The new sexual assault law attempts to redress aspects of legal procedure recognized as discriminatory towards women.

2.2 Sexual assault provisions of Bill C-127

2.2.1 Designation of Offence

The most obvious change is the designation of the offence. The former offences of rape, attempted rape and indecent assault on a female or male have been replaced by three levels of sexual assault. This change removes the emphasis on penetration that had made rape a gender specific offence and provides a more universal definition encompassing assaults perpetrated against males as well as females.

Because of the myths associated with rape and the inference that a victim must have done something to bring on the assault, women rape victims have been stigmatized. The shift in emphasis from a sexual (rape) to assaultive (sexual assault) offence is an attempt to remove the cultural stigma associated with the former designation and thereby encourage reporting.

Bill C-127 designates the following under Sexual Assault:

246.1 (1) Sexual Assault;

246.2 (2) Sexual Assault;

- (a) With A Weapon;
- (b) Sexual Assault -- Threats To A Third Party;
- (c) Sexual Assaults Causing Bodily Harm;
- (d) Sexual Assault -- Party To The Offence; and

246.3 Aggravated Sexual Assault.

2.2.2 Spousal Immunity

In addition to removing gender from the offence, the law reform also deals with spousal immunity to prosecution for sexual offences. Prior to the law reform, husbands could not be charged with raping their wives. This served to sustain the historical concept of male ownership of their wives and preserve the ideal of the nuclear family at all costs.[3] A focus on the assaultive aspect of the offence confronts the issue of conjugal obligation and allows for the protection of persons, regardless of relationship to the offender. Now, according to law, marriage will no longer protect a spouse against being charged with committing a sexual offence.

> **Bill C-127 section 246.8 states that a husband or wife may be charged with an offence whether or not the spouses were living together at the time of the alleged incident.**

2.2.3 Corroboration

The former law required corroborative evidence, such as a witness to the actual offence or to a display of extreme distress exhibited by the victim immediately following an offence, or cuts, bruises, torn clothing, etc. to substantiate a victim's complaint of being sexually assaulted. Injury to complainants served not only as evidence of an illegal act, but also as an indicator in defining an assault according to the social stereotype. This requirement supported the assumption that a crime of violence must be accompanied by injuries and failed to acknowledge the many potential circumstances of a sexual assault that might not result in the necessary visible evidence. For example, the use of psychological power, fear, and threat of force can elicit compliance from victims without the use of overt violence. Victims' responses may also differ, depending on individual characteristics and circumstances of the assault. It is unreasonable to assume that all victims who have undergone a traumatic event will respond consistently, according to some socially defined standard. The new law supports the logic of a differential response and, as well, the possibility of such an offence occurring without any observable effects. Hence, the absence of such evidence no longer precludes a conviction.

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[3] See Brownmiller (1975) and Clark and Lewis (1977) for a discussion on the historical concept of females as the property of males.

> **Bill C-127 section 246.4 states that corroboration is not required for a conviction on charges of incest, gross indecency, or any of the new sexual assault offences and the judge shall not instruct the jury that it is unsafe to find the accused guilty in absence of corroboration.**

2.2.4 Recent Complaint

Rules relating to the matter of recent complaint have been repealed. Formerly it was believed that a victim suffering a genuine sexual assault would complain to someone at the first opportunity. The presumption of an immediate response failed to consider the impact a sexual assault might have on some victims: factors such as embarrassment, ambivalent feelings about reporting a family member or significant other, fear of reprisal, or sheer confusion, might cause delay in responding. Now, offences that previously could not be prosecuted because of time lapse can be heard and delay in reporting cannot be a defence in the case.

> **Bill C-127 section 246.5 states that the rules relating to evidence of recent complaint in sexual assault cases are hereby abrogated.**

2.2.5 Previous Sexual Conduct and Reputation

Questioning complainants as to their sexual past has always existed in some form under sexual offences legislation. Expectations of appropriate behaviour for women were most clearly demonstrated by the fact that this line of questioning was used mainly to show whether a complainant appeared culpable in some way for falling prey to an accused. The issue was often not whether the act took place, but whether the complainant in some way provoked it. Credibility was often contingent on strict standards of morality imposed on women. For example, respectable women were subject to censure for being sexually active. It was only acceptable for a woman to engage in sex within marriage. If a sexual assault occurred in the context of a social situation -- hitchhiking, or even walking alone at night -- a woman was often considered "fair game." Yet men were not subject to the same stringent restrictions and, when accused of sexual assault, were perceived as responding normally to provocative behaviour. If a woman had engaged in sexual activity with others in the past she was perceived as promiscuous and the defence could question her about prior experiences in detail. The new law has set parameters by which judges can ascertain the validity of such questioning. This change appears to be a growing recognition of individual integrity and the unacceptability of providing legal support for double standards of morality for males and females.

> **Bill C-127 section 246.6 (1) states that evidence relating to the complainant's previous sexual conduct with a person other than the accused will not be allowed unless: (1) it rebuts evidence previously introduced by the prosecution, (2) it is evidence of specific instances that establish someone else as the perpetrator of the crime, or (3) it is evidence of sexual activity that took place on the same occasion as the alleged incident, where it relates to the consent that the accused alleges he believed was given by the complainant.**
>
> **Bill C-127 section 246.7 states that evidence of sexual reputation, whether general or specific, is not admissible for the purpose of challenging or supporting the credibility of the complainant.**

2.2.6 Consent

There has been a tendency for perpetrators to be favoured in determining "benefit of doubt" when the defence of mistaken but "honest belief as to consent" was applied. This simply means that an accused would not deny that the sexual act took place, but indicated reason to believe the complainant consented to the act. Such a belief by the accused, whether or not the belief is correct, removes the intent to commit a crime. This defence has been severely criticized because the onus has been on the complainant to prove there was no cause given for the mistake and because it tends to mitigate the perpetrator's responsibility. In the same light as victim credibility, the issue of mistaken belief of consent is partially dealt with by clarifying the test of consent and of the factors that invalidate consent as a defence, so that the judge may instruct the jury accordingly. Therefore, a defence of belief in consent must be based on reasonable evidential grounds. Encouraging the acceptance of responsibility for one's own actions might serve to diminish the tendency to blame the victim.

> **Bill C-127 states that no consent is obtained where the complainant submits or does not resist by reason of (a) the application of force to the complainant or to a person other than the complainant; (b) threats or fear of the application of force to the complainant or to a person other than the complainant; (c) fraud; or (d) the exercise of authority.**

2.2.7 Provisions For Sentencing

The penalties associated with (s. 246.1) sexual assault is imprisonment for up to 10 years if the prosecution chooses to proceed by way of indictment; if charge is proceeded with by way of summary conviction, the maximum penalty is six months. For s. 246.2a, 2b, 2c, 2d -- sexual assault with a weapon, threats to a third party, causing bodily harm or party to the offence -- the penalty is imprisonment for up to 14 years; for aggravated sexual assault, it is up to life imprisonment.

2.3 Summary of Substantive, Evidentiary and Procedural Changes in Bill C-127

Bill C-127 made important changes in three major aspects of processing criminal cases relating to sexual assault. First, the offence of rape has been altered to three levels of sexual assault. By placing sexual offences into the general category of assault, the emphasis is on the assaultive nature of the crime. Hence, the stigma associated with a sexual offence is lessened and victims encouraged to report the assault. A second substantive change is to make sexual assault gender neutral. Although the overwhelming number of victims of sexual assaults are women, this revision may encourage reporting by victimized men (many of whom are young) and encourage a general shift in societal attitudes to sexual assault. This also assists in emphasizing the assaultive rather than the sexual aspect of the offence. Third, by removing spousal immunity from prosecution from the Criminal Code, sexual assault in marriage is recognized as an offence.

Second, the rules of evidence are considerably changed resulting in some procedural changes. For example, sexual reputation may not be used as a defence to challenge the credibility of the complainant and in only three specific instances can mention of prior sexual activity with anyone but the accused be introduced. This means that defence lawyers are now severely limited in introducing evidence of the complainant's prior sexual activity. In addition, under the old legislation, the practice was to not proceed with complaints that were not immediate. The new legislation removes this discretion and directs the courts to treat all complaints on an equal temporal footing. Another evidentiary shift is that corroborative evidence is not required; thus, the judge is no longer required to instruct the jury that it is unsafe to convict in the absence of such evidence. Since sexual assaults usually have no witnesses, this change is an important alteration to the evidence required to convict. Finally, although honest though unreasonable belief in consent is still a defence, the judge is obliged to instruct the jury as to the reasonableness of that belief. This change tends to shift the onus of proof from the victim and encourage the recognition of responsibility for one's own actions.

2.4 Objectives

With this background, it is now possible to identify the basic objectives of Bill C-127. They are:

- to reduce or prevent secondary victimization of the victim resulting from her (or his) involvement in the criminal justice system;
- to extend legal protection to a wider range of Canadians and to enhance their protection from a wider range of nonconsensual sexual offences;
- to encourage reporting and affect founding and conviction rates for sexual offences.

To achieve these primary objectives, Bill C-127 must be interpreted and implemented by the criminal justice system. Although the legislation can provide direction, specify procedures and set limits on evidence, the criminal justice system has many opportunities for individuals and institutions to apply discretion. Coupled with the legislation must be a shift in general societal attitudes to ensure that its intent is fulfilled. However, if it is seen that the main actors in the criminal justice system (police, prosecutors, defence attorneys, judges and juries) do interpret the new legislation appropriately, victims may be willing to proceed with complaints that otherwise may not have been reported. With a higher complaint rate and a more humane criminal justice process leading to lower attrition of cases, the conviction rate should rise.

2.5 Recent Research Relating to the Study

Several studies on the impact of rape reform legislation include ones done in Michigan (Marsh, et.al., 1982), Washington (Loh, 1981), Nebraska (Gilchrist and Horney, 1980), California (Polk, 1985; LeBeau, 1987), and a recent study looking at six jurisdictions (Horney and Spohn, 1987).

Legislative changes evaluated in these studies were similar to the changes made in Canada, though the Canadian reforms were broader than those in most states. The effects reported in the United States were modest at best. The only changes of any magnitude were found in California and Michigan.

In a study using 1971-1975 data from San Diego, LeBeau looked at the impact of rape law reform on the reporting of rapes to police. In 1974, California restricted testimony on the victim's previous sexual history, prohibited the use of the term "unchaste character" to describe a rape victim in court, and prohibited any inference that the victim's prior sexual conduct had any bearing on her credibility. In measuring the effect of these changes, LeBeau looked both at the number of rapes reported to the police and at the characteristics of reported cases. He hypothesized that if the law did have an impact on reporting, it would increase the number of cases reported and also the proportion of reported cases that did not conform to the pattern of classic rape. In support of these hypotheses, LeBeau found that there was a substantial increase in the total number of reported rapes in 1975 (although there had also been a similar increase in 1974). He also found that there was a higher proportion of non-stranger rapes, white victims reporting intra-racial rapes and more rapes reported by victims who did not receive physical injuries. Polk's subsequent work in California found no change in clearance rates or conviction rates, and a slight increase in rates of incarceration.

While the number of reported rapes increased in San Diego, they did not increase in Michigan (Marsh, et.al., 1982) although Michigan's reform was more comprehensive than California's. However, the Michigan study did show an increase in both arrests and convictions for rape. Criminal justice officials in Michigan felt that the prosecutor's chances of winning a rape case were increased by the restrictions on testimony about the victim's prior sexual conduct. These officials also felt that the victim's experience was not as unpleasant because of the new law.

The study carried out by Horney and Spohn avoids some of the limitations of the earlier work. First, their study looked at rape law reform in six different states, therefore comparative analysis among states with different degrees of reform is possible. Legislative change ranged from reforms enacted in Michigan and Illinois that were similar in scope to those enacted in Canada, to Georgia and Washington, D.C., which have enacted some evidentiary changes relating to corroboration and prior sexual history but which both require genital penetration and some evidence of resistance. Second, their study used a time series analysis of 15 years in order to show long-term trend data. Third, the effects of "history" on the dependent variables can be controlled to some extent by the fact that different jurisdictions had different intervention points (different dates of legislative change), while environmental factors such as concern for rape victims are apt to be relatively constant from one jurisdiction to another.[4]

Horney and Spohn have done a time series analysis using the date of legal change as the independent variable and offences reported to the police, number of indictments and number of convictions as dependent variables. While the analysis is not yet complete, preliminary results from four of the six jurisdictions has shown that the only significant effect of the legal changes is an increased number of indictments in Chicago, a city in a state that had one of the most comprehensive legal changes. They hypothesize that effects will be greatest in jurisdictions that have had the strongest reforms; this suggests that Bill C-127 may have some measurable impact. They also suggest that legal changes will affect indictments and convictions more than offences reported to the police since the changes are better known among the legal community than among members of the public.

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[4] In assessing the impact of legislative change, we can seldom run a properly controlled experiment having a comparison or control group in which there is no change to compare with the experimental group that does receive the intervention. This makes it impossible to attribute any effects solely to the legal change, as the effects may have been caused by environmental changes. For example, any changes we might attribute to legal reform might also be due to environmental factors such as changing public attitudes and/or successful lobbying and educational work by feminist groups.

3.0 DESIGN OF THE EVALUATION

3.1 Introduction: Evaluating Legislation

Law is a reflection of society and usually reflects current norms. It provides the context in which to assess and sanction deviations from generally accepted norms. It may occasionally also be a creative force that can itself produce changes in the social order. Existing customs, norms and practices that have become institutionalized in the culture are difficult to legislate away.

Using law as an instrument of social change involves two processes: (a) institutionalization, the establishment of a rule and provisions for enforcing it in order to ensure compliance (people must be aware that sanctions will be imposed if the rule is broken); and (b) internalization, the process whereby members of society adopt the values implicit in the law. People come to believe in the rightness of the law and obey it, not because they are forced to, but rather because they want to and feel it is right.

Institutionalization is relevant to the initial stages of changing peoples' behaviour and hence the social order. The initial stages of a new law are often characterized by forced compliance. At the same time, simply passing a law does not guarantee that it will be implemented. Legal reform is gradual as it passes through the courts for interpretation and grounding in established precedents.

Internalization, on the other hand, occurs after law has been established and enforced for a period of time. As law becomes internalized there is a shift from forced to voluntary compliance. Laws aimed at changing the status quo are really attempting to prevent or extinguish customary behaviour. As reality is socially created and reflects accepted patterns of behaviour in mainstream society, considerable relearning and readjustment must go on during this period.

There is, at the same time, another important component to the process. The impetus for legal reform is not derived from a vacuum. It must come from social awareness and an active desire for change. Therefore laws and practices are challenged prior to institutionalization and internalization. Reform of the sexual assault laws has been a response to an active women's network protesting violence towards women. As public awareness has increased, so has the outcry of victims against systemic discrimination within the legal/judicial institutions.

Whether an established practice can be changed by law depends in part on the nature of the practice. Its significance, visibility and extent of popular support are all important elements to consider. For example, while violence against women has been tolerated for generations, it has only become socially significant as a result of a dramatic increase in awareness of the extent to which women have been violated. Rape studies, motivated by a growing social consciousness, exposed a serious problem to counter official statistics that had been grossly deficient as a measure of incidence. The women's movement has been instrumental in demonstrating the unacceptability of violence and sexism and lobbying efforts have resulted in various mechanisms intended to change the conditions that cause the violence.

Because policy or programs are sometimes not discrete, evaluations are also not discrete. In such instances overall evaluations are a complex series of small ones, each marshalling evidence within a framework to arrive at a final judgment about the program's worth. Although it may appear otherwise, legislation is not a discrete event; it, too, is a process evolving over a period of time and involving decisions at several levels. As discussed above, legislation is frequently implemented in response to public pressure and the sexual assault legislation arose in response to the efforts of women's groups to expose and reduce the incidence of sexual assault. In addition to changes in the criminal justice practices (e.g. processing, prosecution), the law is usually intended to address a number of aspects of social problems comprising:

- changed offender behaviour through social control including threat, direct control of offenders, rehabilitation, and monitoring (probation);

- changed treatment of victims through encouragement of reporting, compensation, post event treatment and support (including legal/judicial support); and

- changed public awareness and understanding of the crime and its broad social consequences.

These objectives are frequently embedded deep in the legislation and may be present in varying degrees in different laws. Legislation, often introduced or revised in response to societal pressure, is usually the result of compromise. Therefore, it is not surprising that distilling specific objectives from the legislation can be difficult. In addition, legislation rarely is able to present isolated objectives. For example, of the offender's rehabilitation may be attenuated by the need to control the offender through threat of punishment and by his or her heightened awareness of the crime's impact on the victim.

Legislation never occurs without social impetus. As a major intervention into social processes, it arises in response to a perceived need, is introduced and amended in the public domain and is implemented over a period of time as both the general and key publics learn of the changed social environment.[1]

The enactment of the sexual assault legislation by Parliament was expected to encourage victims to report, improve conditions for victims in the criminal justice process, and improve victims status in the eyes of the law. It was also expected to facilitate successful prosecutions and increase the certainty of conviction. In other words, the law was enacted to promote social/legal change, a change designed to alter attitudes towards sexual assault, to make the law a more effective instrument to deal with sexual offences, and to make the system more responsive to victims.

This discussion leads to two main conclusions. First, any outcome measurement in the form of higher conviction rates or more reporting faces hurdles:

- Since the true level of sexual assaults is unknown (and unknowable), estimating whether there is more reporting as a result of the legislation is not possible. A reasonable proxy approach might be to simply track the number of reports under the assumption that if reporting rates increase, it is the result of victims perceiving a better system and not because the incidence of sexual assault has increased.

- Considerable time must pass to assess such a change. Many of the attitudes of key actors in the criminal justice system may not change quickly, and it is probable that major effects, if they exist would not be discernable for a decade.

Second, a process evaluation approach is indicated. This implies an evaluation founded on extensive qualitative information in the form of perceptions of major actors in the system (including victims). In addition, detailed review of administrative data is indicated to evaluate the extent of the filtering out of cases, to identify the stage at which this is occurring and to track complainants from initial report through to conviction.

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[1] The term "key publics" is crucial, for research in any program requires identification of central decision makers and actors upon whose cooperation the legislation (and its evaluation) depend.

3.2 Methodology

3.2.1 Overview

Evaluation implies comparison. The classic paradigm involves the experiment where a controlled intervention is introduced into a closed system with a view to altering a specific attribute or outcome. In this model, depending on the degree of control over other environmental factors and the problems in measuring the intervention and outcome, it may be possible for the researchers to unambiguously attribute a change in outcome to the intervention.

In social research, pure experimentation is rarely possible. At times, psychological experimentation such as sensory deprivation strives toward the pure experiment, but the subject can never be controlled completely. Thus, the paradigm for attributing cause and effect is termed "quasi-experimental" design.

3.2.2 Evaluation Research: Outcome versus Process

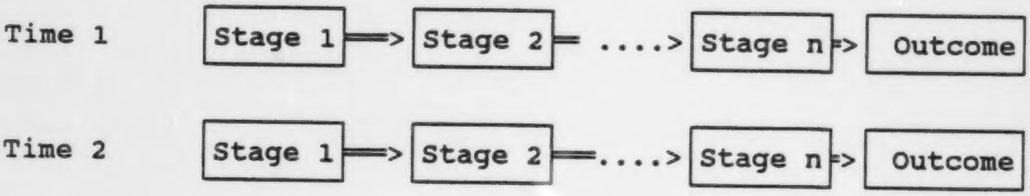
The quasi-experimental framework is designed to provide a clear answer to the question, "Has the program made a difference?" This is the core of the evaluation question, but measuring quantitative outcomes alone can prejudice a proper conclusion. Summative or outcome evaluation, attributing changes as a result of an intervention, is often incomplete. Process or formative evaluation, where policy administration and implementation are the core issues, is required for final assessment.

Often outcomes are perverse in that the intervention apparently has worsened the situation. Because social interventions, especially legislation, have complex impacts, they initially may appear adverse, especially when measured using limited definitions of the outcome. However, the evaluation, if constructed as a process investigation, may produce evidence that change (in attitudes, bureaucratic practices, etc.) has occurred that may eventually produce positive change in the outcome. For evaluations of complex interventions, where the impact is expected to unfold over a period of time, a process orientation is usually mandatory.

Process evaluations are also required to ensure that unintended outcomes are identified. Analyzing the process of implementing interventions and dissecting the attitudes and behaviours of individuals and institutions involved in the intervention is essential to identifying unintended outcomes.

Since social policy sometimes results in perverse reactions (for example, a successful crime prevention program may actually appear to worsen the incidence of crime by encouraging more complete reporting), it is essential that the policy process be examined. For this, it is essential that the process of policy change be identified and charted. In Figure 1 a typical policy that has a number of links is shown.

Figure 1



As the result of change, outcomes to be modified (reduction in adverse incidence) are increased. Simply comparing the outcomes across the two time periods (number of crimes) may reflect poorly on the policy change. However, this reduction may be an artifact that is revealed when the process is explored. Therefore, evaluation research may reveal the increased reporting and may identify a number of positive changes that have occurred, frequently in attitudes of key professionals and gatekeepers. The evaluators may thus conclude that in due course the desired change may be expected.

3.2.3 Evaluating Legislation

Legislative change is usually an important intervention that arises out of a period of dialogue and debate. It also usually requires a period of learning and implementation that delays its full impact.[2] Legislation acts at several levels.

First, it acts directly to regulate offenders and victims and the relationship between the two (by changing the definition of what constitutes a crime). Second, it acts to communicate social control information back to the general public. Third, it regulates activity after the offence through punishment, rehabilitation and compensation (financial and emotional).

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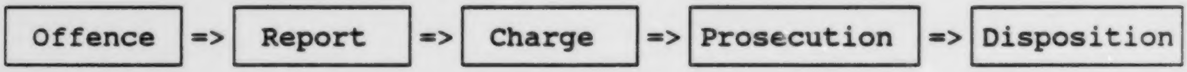
[2] The delay may also be due to resistance from key groups required to introduce and enforce the legislation.

Changes in legislation do not fall neatly into the quasi-experimental model. Interventions are complex, never localized at a point in time (and probably are regionally variable in terms of interpretation and process), frequently have diffuse objectives with multiple outcomes, operate in complex and frequently politically charged environments and have impacts that may at first appear negative.

Consider a typical element of the sexual assault reporting -- disposition process.

Figure 2



One of the intended outcomes of Bill C-127 is to ensure that offences result in dispositions. It may be that, overall, the legislation has actually reduced the number of convictions, reduced the convictions/offence ratio, or the convictions/report ratio. A simple outcome evaluation could easily dismiss the effectiveness of the legislation if, as a result of the introduction, links in the translation of offence to disposition had actually worsened. This worsening may be an either unintended consequence of the legislation or the effect of an intervening variable.

A process evaluation examines each link, through attitudinal data and by case tracking, to establish if the overall process of reporting to disposition has deteriorated, or whether some individual links have improved while others have worsened whether there are unintended effects. In this way the evaluation becomes constructive and reduces the possibility that useful changes are dismissed prematurely.

For example, if the results were to indicate an increase in acquittals, one cannot deduce that the law is ineffective as a means of convicting offenders. This finding would have to be interpreted within the context of procedural changes within the criminal justice system and consideration of increased numbers of cases proceeding through the system. It is quite possible that if all factors were identified, the seemingly negative change might prove to have positive attributes fulfilling the legislation's intent.

The enactment of Bill C-127 denotes an intervention that is presumed to have an impact on victims of sexual assault and justice system personnel. Has social/legal change been promoted by this change in law? In order to fully address this question the impact, if any, must be evaluated. The following discussion outlines the design for evaluating the impact of Bill C-127.

3.3 Evaluation Plan for Bill C-127

3.3.1 Overview

A simple, pretest/post test quasi-experimental design was used in which data (interviews with key actors in the criminal justice system and administrative files for all levels in the criminal justice system) were collected for two years prior to the enactment of the legislation and two years afterwards.[3] This was complemented by a process evaluation of the translation of offences to dispositions before and after the legislation. Observations for the pretest involved data for 1981 and 1982. Since the sexual assault legislation was enacted in 1983, the data for this year were excluded to allow for the transition and familiarization process that must be considered when any new piece of legislation is put into practice. Post test observations involved data for 1984 and 1985.

The assessment of the legislation's impact consisted of a number of different studies. All cases of sexual assault reported to the police for 1981 and 1982 were compared to those reported for 1984 and 1985. Researchers followed sexual assault cases through the system to prosecution and court levels, so as to analyze any differences in the filtering process between the two test periods. To supplement the criminal justice system data, files from the Lethbridge Sexual Assault Centre were also reviewed. In addition, court monitoring and interviews with key informants (police, prosecutors, defence lawyers, physicians, sexual assault counsellors, and victims) have provided descriptive information for a more balanced view of the effects of the legislative reform. While cases were followed through the courts, the Lethbridge daily newspaper was monitored to examine how they were reported.

Because of the scope of the legislative reform and because it is not possible to control for external events that might affect our dependent variables, clear inferences cannot be made from any of the sub-studies. However, the use of multiple methods and multiple data sets increases the likelihood that our conclusions are valid.

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[3] A detailed review of the data sources may be found in section 3.4 below.

3.3.2 Internal and External Validity as it Applies to Bill C-127

Internal validity refers to the extent to which the conclusions drawn from evaluation results accurately reflect the impact of the intervention being evaluated. In estimating internal validity the researcher critically and systematically assesses how several factors may influence the findings. Because of the nature of this design, the most obvious weakness is the threat to internal validity posed by the prolonged process of debate and implementation involved in all major legislation. It is possible that even during the period of 1981 and 1982, the effects of the impending legislation were already being felt. For instance, the development of outreach programs and the provision of an educational function to assist assault victims may have contributed to some effects that are only now being discovered. These programs, a result of the women's movement, cannot be completely controlled for in the research design. These and other factors that might affect the reporting and processing of sexual assault cases must be considered when conclusions about the legislation's impact are being drawn. In the interview phase of the study, key actors in the criminal justice system were asked if they were aware of factors other than the legislative change that might have an impact on the way in which sexual assault cases are reported and processed.

External validity refers to whether research findings can be generalized. Estimating external validity is a process in which the researcher considers how the generality or representativeness of a finding is threatened by effects from events that the researcher may have limited control over, such as reactivity. More specifically, if key actors such as judges, defence lawyers, crown attorneys, etc. are aware that they are being monitored in the courtroom, they may perform in atypical fashion and revert to typical behaviour when they are no longer being observed (Hawthorne effect). Another concern of external validity is the selection-treatment interaction effect. For example, the emphasis in this evaluation was on reported cases of sexual assault, a fact that makes it difficult to generalize findings to victims who have not reported. Issues of validity were addressed by using multiple measurement to ensure that basic concepts were captured. Finally, the whole study used six sites to increase the researchers' ability to generalize the results to Canada as a whole.

To ensure that all stages of the legislative, enforcement and judicial systems were identified and evaluated, key informants were asked about the process before and after the legislation. This approach ensured that each link in the criminal justice system was examined to provide policy feedback on the implementation of the legislation. It is likely that the process evaluation of the legislation was the most important task in revealing its contribution as well as identifying specific links requiring additional support and attention.

3.4 Data Sources

3.4.1 File Data

For this evaluation, information was extracted from police records, crown files, court documents, and files from the Sexual Assault Centre files. The study focused on the two years prior to the enactment of Bill C-127 (1981-1982) and two years afterwards (1984-1985). The two study periods were compared to analyze the extent to which any changes occurred that might be attributed to implementing of the sexual assault legislation, (e.g., whether the law reform has encouraged complaints from spouses, men, prostitutes, or others and, if so, whether they have been successful in having charges laid, and what kinds of procedural changes have been implemented in dealing with the former requirements concerning corroboration and recent complaint).

Because records are prepared for organizational purposes, they sometimes did not include variables of interest to the evaluation. Further, the researchers had no control over the quality of the information recorded in the files. This problem is compounded over time when procedural changes may alter the way events are reported. Additionally, organizational personnel may change a situation that could lead to alterations in recording procedures over time. Because of these factors, apparent changes in outcome may actually reflect factors in organizational reporting or recording procedures. Similarly, real change in outcome may be concealed by such bookkeeping changes.

Although records can reflect biases of the organization or persons preparing the records can actually be a source of data that permits additional insight into the attitudes and perceptions of staff in the system. For example, police perception of a complainant's credibility may be based on judgment of the person's character and affect the police's decision to found a complaint. One way to evaluate the legislation's impact is to compare the processing of pre- and post reform cases in which doubt was cast on the character of complainants to determine whether this factor made a difference in founding, charging, prosecuting and convicting.

Police Files

Police reports signify the first official stage of a sexual assault complaint. At this level a case is deemed to be founded or unfounded. A classification of unfounded suggests that the officer receiving the complaint does not believe the complainant. This may be due to lack of evidence or other factors that are often discretionary (e.g., officer believed that the complainant was too intoxicated to recall details; there were contradictions in the complaint; complainant had a history of unfounded complaints). However, a case for which there is no obtainable evidence may receive a designation as founded, although prosecution is unlikely. The officers handling the complaint decide whether they think it is credible, and thus founded. Charging also occurs at this level, although police may ask the crown attorney about the advisability of proceeding with a case.

The data collection instrument was divided into three sections: police, crown prosecution, and court. All sexual assault cases reported to the Lethbridge City Police during the pre- and post reform periods were examined and cases that proceeded beyond the police investigation (i.e., charges were laid) were tracked through the courts on the same instrument.

Lethbridge City Police received 19 sexual assault complaints in 1981 and 42 in 1982. Although all 1981 and 1982 police files had been purged, the police had retained a card file containing the name of complainant, date of birth, complaint and file number for most of the destroyed files. Using crown/court files, files from the Sexual Assault Centre, and newspaper clippings, the researchers were able to complete most of the required data schedule for 47 of the prereform cases. Lethbridge RCMP were able to provide additional information for cases where their jurisdiction overlapped that of the city police. Three RCMP files were appropriate for the study and were included to augment the number of cases in the prereform population.[4] Relatively complete information was obtained on 51 sexual assault complaints received by police in 1981 and 1982. One was excluded to avoid duplicating information. (The case pertained to two sisters aged between 12 and 15, who were indecently assaulted by their uncle. Because there were two complainants, there were two files although it was a single event involving identical circumstances. Hence, one was excluded from the data.)

The 1981-1982 cases involved complaints of rape, attempted rape, indecent assault, sexual intercourse with a female under 14 and buggery. To permit a comparison with the post reform sexual assault data, incest cases were excluded unless accompanied by other charges relevant to the study.[5] The information gathered from all sources provided a total of 50 prereform incidents involving 50 complainants and 47 accused. A census of sexual assault cases (C.C. 246.1, 246.2,

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[4] The offender or victim was in or from Lethbridge.

[5] It must be noted that absolute comparability is not possible because the changes in the law have created changes in the nature of the offence.

246.3) in 1984-1985 was used for the post reform population and consisted of 117 incidents, involving 120 complainants and 100 accused.[6]

Incidents that were one-time events and involved more than one complainant or more than one accused were classified as a single incident of sexual assault. Ongoing offences that had multiple complainants and involved one accused, or alternately multiple accused and one complainant, were classified as separate incidents. Because multiple accused and/or multiple complainants were involved in several cases, the total number of complainants and accused differs from the total number of incidents.

Information obtained from police included socio-demographic details of the complainant and accused, description of the offence (time, location, resistance, injuries sustained, medical treatment, accomplices, witnesses, etc.), victim-offender relationship, promptness of reporting, offender's prior record, methods of classifying complaints, subjective data (i.e., personal comments reported in files), and any information about the police processing of cases. Reports dropped at the police level were examined to determine whether the decision was made by the complainant or police and the reason for termination.

Crown Prosecution Files

The next level of criminal justice processing is the prosecution. Crown attorneys determine whether a complainant should be prosecuted, how the case should be prepared and the likelihood of conviction. Crown attorneys may alter or reclassify charges as they decide which ones to proceed with in order to obtain a conviction. They can also negotiate with defence counsel to secure a guilty plea from the accused in exchange for a reduction in the number or seriousness of the charges, or a lenient recommendation for sentence.

In cases that proceeded to the crown prosecution level, information on prosecution proceedings was gathered on the second section of the instrument. Data pertaining to the prosecution's involvement provided details on charging, evidence, witnesses, plea bargaining, preliminary hearings and preparation of complainants for court. Information was collected about the termination of charges at this level, including details on whether this decision was initiated by the crown attorney prior to a preliminary hearing, by a judge at a preliminary hearing or by the complainant, and the reason for the decision. Crown prosecution files also were used to obtain information concerning the trial process, including the nature of final charges, disposition, sentencing and appeals.

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[6] Some cases involved other sexual or non-sexual charges concurrent with *sexual assault*

Juveniles, who made up 5.9 per cent of the 1981-1982 accused and 4.8 per cent of the 1984-1985 accused, were not tracked beyond the police level. These cases are handled by Youth Court. Twenty-two cases in the prereform period and 50 cases in the post reform period were tracked at the crown prosecution level.

Court Files

Finally, the court level will result in the final disposition of charges for cases still in the criminal justice system. A case may be heard in Provincial Court, or Court of Queen's Bench. The full range of processing at the court level can involve a preliminary hearing, a trial, sentence and appeal. The trial may be heard either by a judge alone, or by a judge and jury. After the trial ends the crown attorney or defence counsel may appeal the decision. This could result in a new trial.

The third section of the instrument was completed if a case proceeded to a sentencing appearance, preliminary hearing, and/or trial. Court documents were used to supplement information concerning the nature of final charges, dispositions, sentencing and appeals. Seventeen cases at the prereform period and 40 at the post reform period were tracked at the court level.

Sexual Assault Centre Files

The Lethbridge Sexual Assault Centre was first opened in December, 1974, with temporary funding. Less than two years later, in October, 1977, it was closed. For the next four years several agencies incorporated aspects of the centre's previous role into existing programs. None, however, could provide the focus, visibility and public access associated with a sexual assault centre.

In February, 1982, with a three-year government contract, the Sexual Assault Centre was again operating, closing at the end of the contract in October, 1985. Since that time, plans have been made to develop a new sexual assault centre within a more permanent setting. Lethbridge Family Services hired an experienced worker to do groundwork for the new centre. During this time the worker was already taking sexual assault calls directed to her through Lethbridge Family Services. Volunteers were recruited and received 40 hours of training in the fall of 1987, with the centre opening officially at the end of October.

Although the Sexual Assault Centre in Lethbridge closed in the early fall of 1985, the former director gave us access to the files from 1982 to 1985. It was necessary to review all files from this period in order to select those from the study years which fit the criteria of the study and contained enough information for the research schedule. To ensure sufficient content, the client had to have had more than two contacts with the centre, or less if the contacts were significant in the sense that they included the courts or hospitals. In some cases there had been more than two contacts, but information was so sparse that the schedule could not be filled out. All sexual assaults with the exception of incest were used for the study.

The centre was not open in 1981, so the prereform sample consisted of 27 files from 1982. Of the 55 files opened in 1982, nine had insufficient data for the schedules, 13 involved incest, six were missing, and the remaining 27 were used for the prereform sample. The post reform sample consisted of 29 files from 1984 and 1985. In 1984, the Sexual Assault Centre opened 51 files. Of these, 22 did not have enough information, ten were incest, two did not involve sexual assault and the remaining 17 were used in the sample. The researcher noted that the centre received 15 one-time crisis calls for which no files were opened. In 1985 the files were particularly sparse and very few were used for the study. It appeared that one person carried out most of the 1985 work at the centre, and this may be why the files lack information. From January to August, 1985, the records indicated that 44 files were opened. Of these, 27 did not have enough information, one was incest, four were not sexual assault cases, and the remaining 12 were used to make up the total 29 files that formed the post reform sample. Another 18 crisis calls were received, but again did not provide enough information to complete the schedule.

Data from the two samples were compared in order to evaluate any changes in victim responses that might have taken place as a result of Bill C-127. However, the files dealt mostly with counselling victims and few details of the assaults were recorded. Services provided victims included crisis intervention, counselling, and accompanying them to hospital, police interviews and court.

3.4.2 Interviews

Interviews were carried out with key actors involved in investigating, prosecuting, and defending sexual assault cases, as well as with those involved in treating and counselling victims. Respondents included police, prosecuting attorneys, defence attorneys, physicians, counsellors from the Sexual Assault Centre and representatives from agencies that performed similar duties in the absence of a centre.

Initial interviews and file reviews identified the various professionals most frequently assigned to sexual assault cases. These professionals were selected for interviewing. File data from the Lethbridge City Police and the Lethbridge RCMP showed that six officers were most often assigned to sexual assault cases. They were interviewed. All eight prosecutors in Lethbridge were involved with prosecuting sexual assault cases and were interviewed. Six lawyers, who defended most of the sexual assault cases were included in the sample, as were five individuals who had been associated with the Sexual Assault Centre. Four doctors involved with the Lethbridge Emergency Medical Services at St. Michael's Hospital also were interviewed.

The interviews probed for a wide variety of information relating to the nature of assaults before and after the legislation, perceptions about the processing before and after the legislation, evaluative statements on the effect of the legislation on the victim, the criminal justice system and finally, suggestions for changes.

In addition, interviews were conducted with five sexual assault victims who had some experience with the criminal justice system after the implementation of Bill C-127. To obtain access to respondents, the researchers selected all adult victims for 1984-1985 who had gone to court. The crown attorney was asked to request certain victims to participate in the study. Many had moved and not left forwarding addresses, while others refused. Only one person contacted in this manner agreed to be interviewed; the director of the Sexual Assault Centre obtained the other four.

3.4.3 Court Monitoring

In addition to using files from the criminal justice system and interviews with key informants to study the way the courts have responded to sexual assault victims, courts were monitored. Observers attended six trials involving sexual assaults as well as five preliminary hearings and five appearances for sentencing. The court monitoring period was May to December, 1987.

The court observation component included data on characteristics of the offence, nature of charges, details of the prosecution and the defence, details of whether the assaultive rather than the sexual aspect of the offence was emphasized, involvement of witnesses, whether questions about the complainant's character were allowed, issues of corroboration, recent complaint, admissibility of evidence regarding sexual history with the accused, honest belief in consent, comments of the judge and final disposition.

4.0 RESPONSES TO REPORTS OF SEXUAL ASSAULT INCIDENTS

4.1 Police Processing

4.1.1 Police Classification of Complaints

Lethbridge police received 50 complaints of sexual assaults in 1981-1982 and 117 in 1984-1985. In the prelegislative reform period of 1981-1982, the complaints were classified as: indecent assault (21 counts), rape (13), attempted rape (8) and other sex offences (2). There was also one complaint each of: sexual assault with threats; sexual intercourse with a female under 14; buggery; and incest[1]. In the post legislative period of 1984-1985, complaints were classified as: sexual assault (109); gross indecency (7); sexual intercourse with a female under 14 (4); sexual assault with threats (2); other sexual offence (2); and one count each of attempted sexual intercourse; aggravated sexual assault; rape and buggery (Table 1, opposite page).[2]

Table 1 Initial Classification of Sexual Offence by Police (Pre and Post Reform Data)

Offence	PRE Frequency	PRE Per cent	POST Frequency	POST Per cent
Sexual Assault	---	---	109	85.1
Sexual Assault with Threats/ Cause Bodily Harm	1	2.1	2	1.6
Aggravated Sexual Assault	---	---	1	.8
Rape	13	27.1	1	.8
Attempted Rape	8	16.6	---	---
Indecent Assault	21	43.7	---	---
Buggary	1	2.1	1	.8
Gross Indecency	---	---	7	5.5
Sexual Intercourse with a Female under 14	1	2.1	4	3.1
Attempted Sexual Intercourse	---	---	1	.8
Incest	1	2.1	---	---
Other	2	4.2	2	1.6
TOTAL	48*	100.0	128	100.0

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[1] The incest case was included in the study because it was misclassified and did not involve incest.

[2] The rape case was misclassified by the police, as the offence of rape did not exist after 1983.

4.1.2 Founded or Unfounded Complaints

In both periods, police regarded the majority of complaints received (Table 2) as founded (82 per cent in 1981-1982 and 82.9 per cent in 1984-1985). Reasons for unfounded complaints included: no evidence, no suspects, complainant refusing to cooperate, and bad character of complainant. The difference between the two time periods was not statistically significant at the .05 level.[3]

Table 2 Police Founded or Unfounded Complaint by Prepost

(Per cent)

	PRE N=50	POST N=117
Founded	82.0	82.9
Unfounded	18.0	17.1

T-Value	D.F.	Probability
- 0.14	165	.8886

4.1.3 Evidence of Bad Character

Often the decision of whether or not to lay a charge is made early in the investigation. In Lethbridge, the police generally conduct a follow-up interview and investigation to determine if a charge or charges will follow a report. The police may base this decision on their perception of the complainant's credibility. These early interpretations can have a profound impact on the outcome of the case. Evidence of bad character was indicated in 18.8 per cent of the prereform cases and 17.1 per cent of the post reform cases (Table 3, below).[4] As seen in

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[3] In seven of the post reform cases, the complaint was unfounded because the complainant refused to co-operate and asked for the investigation to be terminated. Hence these seven appear as both unfounded and terminated at complainant's request.

[4] Missing information has been excluded from the percentages. In cases where "No Information" has been excluded from the table, sample size refers to the number of cases in which data were available. In bivariate tables, "N" refers to the number of cases in which information was available on both attributes.

Table 4 (below), the nature of this evidence often pertained to the sexual morality of complainants. There was very little difference between the two time periods. However, there were three prostitutes in the post reform period and none in 1981-1982, suggesting that prostitutes were more willing to complain of sexual assaults. Because of the small numbers, it is not possible to draw any definite conclusions, but complaints by prostitutes since the law reform could result from restrictions placed on questioning complainants about their reputation, character and past sexual behaviour.

Table 3 Evidence of Bad Character (Pre and Post Reform Data)

(Per cent)

	PRE N = 48	POST N = 117
Yes	18.8	17.1
No	81.3	82.9

T-Value	D.F.	Probability
0.25383	163	0.8026

Table 4 Nature of Bad Character (Pre and Post Reform Data)

	PRE		POST	
	Frequency	Per cent	Frequency	Per cent
Not Virgin/Promiscuous	6	66.7	10	10.0
Prostitute	0	0.0	3	15.0
Previous Sex with Offender	3	33.3	10	50.0
Ulterior Motive	3	33.3	4	20.0
Inconsistent Accounts	6	66.7	5	25.0
Willing Participant	3	.33.3	11	55.0

Note: Percentages add to more than 100 because more than one response may have been reported for an incident.

4.1.4 Charges Laid

A charge was laid in 48.0 per cent of the 1981-1982 complaints and 45.3 per cent of the 1984-1985 complaints (Table 5, below). In the 1981-1982 period, police laid 14 charges of indecent assault, five charges of rape, three charges of attempted rape, three charges of other and one charge of sexual intercourse with a female under 14 and three other charges (Table 6, below). In 1984-1985, the majority of charges laid were sexual assault (51). Along with these were charges of gross indecency (8), sexual intercourse with a female under 14 (3), sexual assault with threats (2) and other (1).

Table 5 Was Charge Laid (Pre and Post Reform Data)

(Per cent)

	PRE N=50	POST N=117
Yes	48.0	45.3
No	52.0	54.7

T-Value	D.F.	Probability
- 0.33	165	.7453

Table 6 Initial Charges Laid by Police (Pre and Post Reform Data)

	PRE		POST	
Offence	Frequency	Per cent	Frequency	Per cent
Sexual Assault	---	---	51	77.1
Sexual Assault with Threats/ Cause Bodily Harm	---	---	2	3.3
Rape	5	20.0	---	---
Attempted Rape	3	12.0	---	---
Indecent Assault	14	52.0	---	---
Gross Indecency	---	---	8	13.1
Sexual Intercourse with a Female under 14	1	4.0	4	4.9
Other	3	12.0	2	1.6
TOTAL	26	100.0	65	100.0

In 1981-1982, 50 per cent of all charges were laid within 24 hours of the complaint compared with 65.4 per cent of the 1984-1985 cases (Table 7, below), but it was not statistically significant at the .05 level. In 90 per cent of the 1981-1982 cases and 72.1 per cent of the 1984-1985 cases the police were the first agency contacted by the complainant (Table 8, below). The difference between the two periods was statistically significant at the .05 level.

Table 7 Elapsed Time of Charge Since Offence Reported (Pre and Post Reform Data)

(Per cent)

	PRE N=50	POST N=117
Immediately (< = 24 hrs)	50.0	65.4
25 - 48 Hours	13.6	7.7
49 Hours - 7 Days	27.3	13.5
8 Days - < 1 Month	9.1	7.7
1 to 10 Months	---	5.8

Chi-Square	D.F.	Significance
4.16425	4	0.3842

Table 8 Order in which Police Contacted (Pre and Post Reform Data)

(Per cent)

	PRE N=40	POST N=86
First Agency Contacted	90.0	72.1
Second Agency Contacted	7.5	26.7
Third Agency Contacted	2.5	1.2

Chi-Square	D.F.	Significance
6.33302	2	0.0422

A number of other variables were examined for differences in charging between the two study periods, but there were not enough cases to provide a meaningful comparison and no significant differences were found. For example, there were no differences between 1981-1982 and 1984-1985 in the laying of charges where there was alcohol involved, when the complainant suffered injuries, or when there was evidence of bad character.

4.1.5 Interviews With Complainant

The majority of complainants (61.5 per cent) in 1984-1985 had one interview with the police while in 1981-1982, 42.1 per cent had one interview (Table 9). In 1981-1982 the complainant was able to identify the suspect in 87 per cent of the cases and the suspect was apprehended in 77.1 per cent of the cases. In 1984-1985, the suspect was identified in 86 per cent of the cases (Table 10) and apprehended in 74.1 per cent of the cases (Table 11).[5] In 87.5 per cent of the 1981-1982 cases and 75.7 per cent of the 1984-1985 cases, the accused did not admit guilt to police (Table 9).

Table 9 Did Accused Admit Guilt to Police (Pre and Post Reform Data)

(Per cent)

	PRE N=32	POST N=70
Yes	12.5	24.3
No	87.5	75.7

T-Value	D.F.	Probability
- 1.37	100	.1706

---

[5] In four cases from the prereform period and 10 cases from the post-reform period there was no arrest because the complainant wanted the investigation terminated and would not cooperate. Hence these cases show up as being terminated at the complainant's request and also as not apprehended.

Table 10 **Number of Interviews Complainant had with Police (Pre and Post Reform Data**

	PRE N=38	POST N=117
	(Per cent)	
None	7.9	9.4
One	42.1	61.5
Two	47.4	26.5
Three	2.6	2.6

Chi-Square	D.F.	Significance
5.93364	3	0.1149

Table 11 **Complainant Able to Identify Suspect (Pre and Post Reform Data)**

	PRE N=46	POST N=107
	(Per cent)	
Yes	87.0	86.0
No	13.0	14.0

T-Value	D.F.	Probability
0.16	151	.8728

Table 12 **Suspect Apprehended (Pre and Post Reform Data)**

	(Per cent) PRE N=48	(Per cent) POST N=116
Yes	77.1	74.1
No	22.9	25.9

T-Value	D.F.	Probability
0.40	162	.6892

4.1.6 Investigation Terminated at the Police Level

In 1981-1982, 52 per cent or 26 cases were terminated at the police level (Table 13). Of these cases, 16 (32 per cent) were terminated by police (Table 14) and 10 (20 per cent) were terminated at the request of the complainant or parent/guardian (Table 15). In 1984-1985, 54.7 per cent or 64 cases were terminated at the police level. Of these, 40 or 34.2 per cent were terminated by police and 23 or 19.8 per cent were terminated at the request of the complainant or parent/guardian.[6] The Lethbridge Police often consult with the crown attorney before terminating a case.

Table 13 **Investigation Terminated at Police Level (Pre and Post Reform Data)**

	(Per cent) PRE N=50	(Per cent) POST N=117
Yes	52.0	54.7
No	48.0	45.3

T-Value	D.F.	Probability
- 0.32	165	.749

---

[6] No information was available for one case.

Table 14 Investigation Terminated by Police (Pre and Post Reform Data)

	(Per cent)	
	PRE N=50	**POST** N=117
Yes	32.0	34.2
No	68.0	65.8

T-Value	D.F.	Probability
- 0.27	165	.7872

Table 15 Investigation Terminated at Complainants Request (Pre and Post Reform Data)

	(Per cent)	
	PRE N=50	**POST** N=116
Yes	20.0	19.8
No	80.0	80.0

T-Value	D.F.	Probability
- .03	164	0.9800

4.1.7 Summary

The similarity in police processing of sexual offences between the pre and post-reform periods is striking. Almost identical proportions of suspects were identified and arrested. A similar percentage of cases were terminated at the police level with almost identical proportions terminated by the police and by the complainant.

In 1984-1985, charges were more likely to be laid within 24 hours of the complaint. Also in 1984-1985, the police were less likely to be the first agency contacted, and conducted fewer interviews with the complainant. Accused persons were more likely to admit guilt in 1984-1985. None of these differences was statistically significant.

4.2 Prosecution and Court Proceedings

4.2.1 Charges Proceeded With or Dropped at Prosecution Level

Charges were laid in 24 cases in 1981-1982 and in 53 cases in 1984-1985. Two of the 1981-1982 cases and three of the 1984-1985 cases involved juvenile offenders and were processed by the Youth Court. Excluding these, 22 out of 50 (44 per cent) cases proceeded from the police to adult court level in 1981-1982 compared with 50 out of 117 (42.7 per cent) in 1984-1985.

In 63.6 per cent or 14 (1981-1982) and 70 per cent or 35 (1984-1985) of the remaining cases, the charges proceeded with by the crown attorneys were consistent with those initially laid by police (Table 16). The other cases had charges added, deleted, or stayed.

Table 16 **Were Charges Proceeded Consistent (Pre and Post Reform Data)**

(Per cent)

	PRE N=22	POST N=50
Yes	63.6	70.0
No	36.4	30.0

T-Value	D.F.	Probability
- 0.53	70	.5962

As shown in Table 17, seven of the 22 cases in 1981-1982 (31.8 per cent) were stayed by the crown prosecutors at some stage of the proceedings compared with 13 of the 50 cases in 1984-1985 (26 per cent).

Table 17 Was Case Eventually Stayed by Crown Prosecutor (Pre and Post Reform Data)

	(Per cent)	
	PRE N=32	**POST** N=70
No	68.2	74.0
Yes, at Trial	9.1	6.0
Yes, Before Trial	9.1	8.0
Yes, Before Prelim.	13.6	12.0

Chi-Square	D.F.	Significance
0.33634	3	0.9531

4.2.2 Trial and Disposition

The accused was committed to trial in 36.4 per cent (1981-1982) and 38 per cent (1984-1984) of the cases reaching the crown level.

Table 18 Accused Committed to Trial (Pre and Post Reform Data)

	(Per cent)	
	PRE N=22	**POST** N=50
Yes	36.4	38.0
No	63.6	62.0

T-Value	D.F.	Probability
- 0.13	70	.8966

In 1981-1982, the majority of those going to trial (75 per cent) were tried by a Court of Queen's Bench judge as opposed to a Provincial Court Judge (25 per cent) or judge and Jury (0 per cent).

Table 19 **Trial by Judge or Judge and Jury (Pre and Post Reform Data)**

	PRE N=8	POST N=19
	(Per cent)	
Provincial Court Judge	25.0	47.4
Queen's Bench Judge	75.0	42.1
Judge and Jury	---	10.5

Chi-Square	D.F.	Significance
2.70831	2	0.2582

In 1984-1985, most of the accused who had trials were either tried by a Provincial Court judge (47.4 per cent) or a Court of Queen's Bench judge (42.1 per cent) while 10.5 per cent were tried by a judge and jury.

A guilty verdict was delivered in 40 per cent or two out of five (1981-1982) cases, and 46.7 per cent or seven out of 15 (1984-1985) cases.

Table 20 **What was Verdict (Pre and Post Reform Data)**

	PRE N=5	POST N=15
	(Per cent)	
Guilty	40.0	46.7
Not Guilty	60.0	53.3

T-Value	D.F.	Probability
- 0.26	18	.7948

Of the nine offenders who appeared at a sentencing hearing and the two offenders found guilty at trial (1981-1982), five offenders were convicted of one count of Indecent Assault, two of one count of Attempted Rape, one of one count of Rape, one of two counts and two of one count of other sex offences, and one of one count of Sexual Intercourse With a Female Under 14.

Table 21 Conviction on Sexual Offence (Pre and Post Reform Data)

Offence	PRE Frequency	PRE Per cent	POST Frequency	POST Per cent
Sexual Assault	---	---	21	80.8
Rape	1	9.1	---	---
Attempted Rape	2	18.2	---	---
Indecent Assault	5	45.5	---	---
Gross Indecency	---	---	3	11.5
Sexual Intercourse with a Female under 14	1	9.1	2	7.7
Other	2	18.2	---	---
TOTAL	11*	100.0	26	100.0

Of the 21 offenders who appeared at a sentencing hearing and the seven found guilty at trial (1984-1985), there were 21 convictions: one count of sexual assault; three convictions for one count of gross indecency; and two convictions for one count of sexual intercourse with a female under 14.

Dispositions (see Figure 3, opposite page) by initial classification (prereform) were as follows:

- two convictions for cases initially classified as rape (both resulting in incarceration, with one sentence for one month and the other for 24 months);
- five convictions for cases initially classified as indecent assault, with two offenders sentenced to incarceration for an average of 13 months, one given a suspended sentence, one given supervised probation, and one fined $500;
- three convictions for attempted rape, with all three sentencved to jail for an average of 31 months; and
- one other offence where the offender was convicted and received a jail sentence of 42 months.

Only one case initially classified as sexual assault with threats (246.2) resulted in a conviction. The offender was found guilty of sexual assault (246.1) and received a jail sentence of 12 months.

4.2.3 Appeals

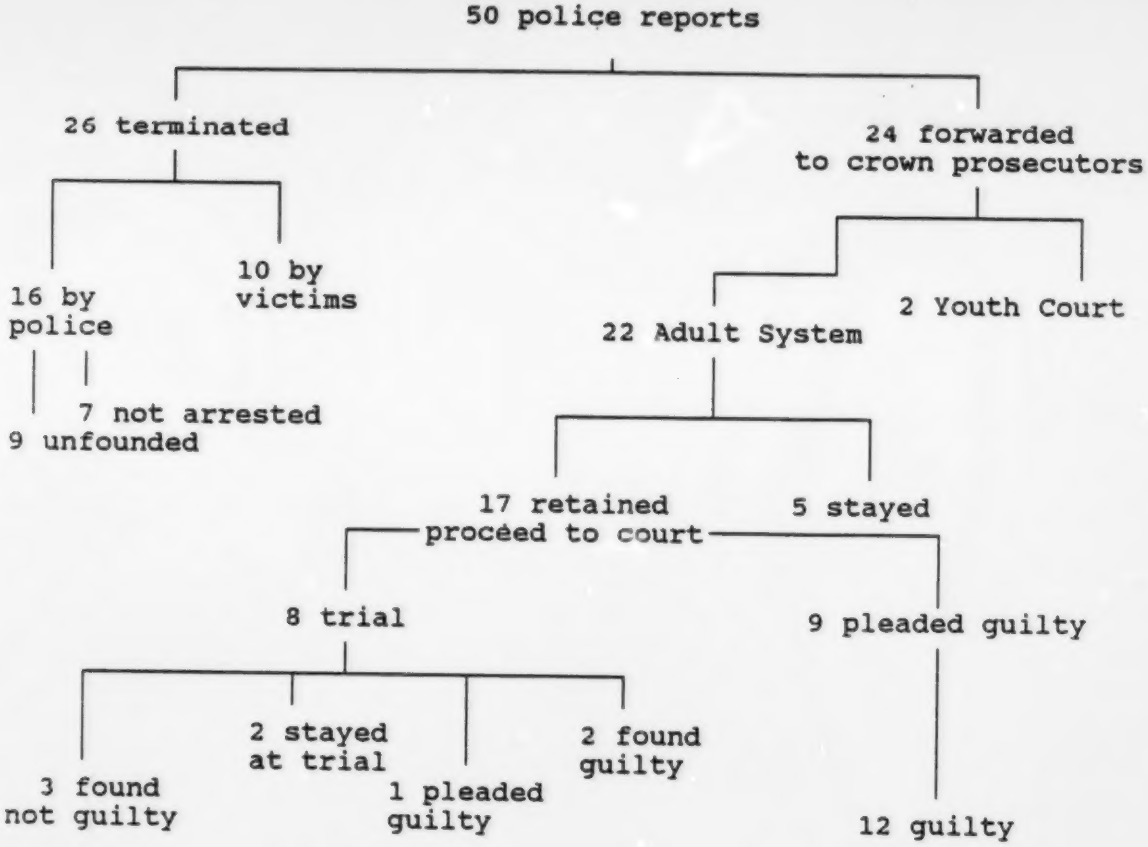
None of the 1981-1982 cases were appealed. However, five (11.4 per cent) of the 1984-1985 cases were appealed by the defence on the grounds that the sentence was too harsh. Four of the appeals were dismissed while one sentence was reduced.

4.2.4 Summary

Figures 3 and 4 demonstrate the filtering out of charges at the police, crown and court levels (Lethbridge site). Of 50 reports to the police in 1981-1982 (Figure 3), a total of 26 (52 per cent) were terminated prior to a formal charge being laid. Charges were laid in 24 cases (48 per cent). There were 10 (20 per cent) guilty pleas, and two (4.0 per cent) were found guilty at trial.

Of 117 reports to the police in 1984-1985 (Figure 4), a total of 64 (54.7 per cent) were terminated prior to a formal charge being laid. Charges were laid in 53 cases (45.3 per cent). There were 22 guilty pleas (18.8 per cent) and seven (6 per cent) were found guilty at trial.

Figure 3 **Adult -- Pre Reform Reports -- Dispositions**


50 police reports
26 terminated
24 forwarded to crown prosecutors
16 by police
10 by victims
7 not arrested
9 unfounded
22 Adult System
2 Youth Court
17 retained proceed to court
5 stayed
8 trial
9 pleaded guilty
2 stayed at trial
2 found guilty
3 found not guilty
1 pleaded guilty
12 guilty

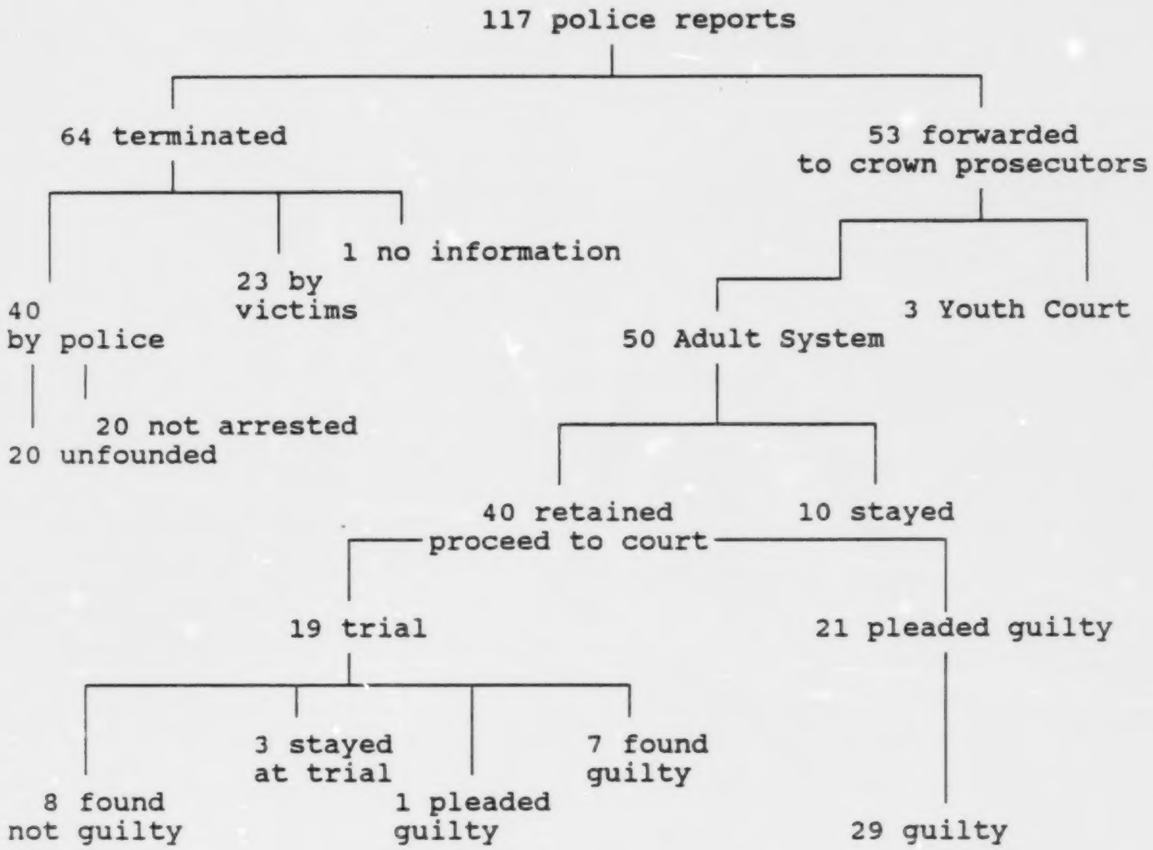
There were two convictions for cases initially classified as rape, both resulting in incarceration. One sentence was for one month, the other for 24 months.

There were five convictions for cases initially classified as indecent assault, with two sentenced to incarceration for an average of 13 months, one given a suspended sentence, oen given supervised probation, and one fined $500.

There were three convictions for attempted rape and all three were sentenced to jail for an average of 31 months.

One other offence received a conviction with a jail sentence of 42 months. There was insufficient information on one case involving a guilty conviction.

Figure 4 Adult -- Post Reform Reports -- Dispositions


117 police reports
64 terminated
53 forwarded to crown prosecutors
1 no information
23 by victims
40 by police
20 not arrested
20 unfounded
50 Adult System
3 Youth Court
40 retained proceed to court
10 stayed
19 trial
21 pleaded guilty
3 stayed at trial
7 found guilty
8 found not guilty
1 pleaded guilty
29 guilty

Of those cases initially classified as sexual assault (246.1) that resulted in a convictions, the following dispositions were given (multiple responses):

- jail - 63 per cent
- suspended sentence - 18.5 per cent
- discharge - 11.1 per cent
- fine - 7.4 per cent
- probation - 3.7 per cent
- the average sentence was 15.7 months.

As shown in Table 22, the filtering out of charges at the police, crown prosecution and court levels were essentially the same in 1984-1985 as they were in 1981-1982.

Table 22 Filtering out of Charges at the Police/Crown/Court Levels

	PRE REFORM Attrition		POST REFORM Attrition	
	Number	Percentage	Number	Percentage
POLICE LEVEL	50	100.0	117	100.0
Unfounded	9 (18.0)	82.0	20 (17.1)	82.9
No Suspect Apprehended	7 (14.0)	68.0	20 (17.1)	65.8
Complainant Initiated	10 (20.0)	48.0	23 (19.7)	46.1
No Information			1 (0.8)	45.3
PROSECUTION LEVEL				
Youth Court	2 (4.0)	44.0	3 (2.6)	42.7
Stayed	5 (10.0)	34.0	10 (8.5)	34.2
COURT LEVEL				
Stayed at Trial/Acquitted	5 (10.0)	24.0	11 (9.4)	24.8
Guilty Plea	10 (20.0)	4.0	22 (18.8)	6.0
Found Guilty At Trial	2 (4.0)	---	7 (6.0)	---
Total Filtering Out of Cases at the Police, Ccrown Prosecution, and Court Levels	38	76.0	88	75.2

4.3 Profile of Complainants

Profiles of complainants from the police files will be discussed in this subsection. Unless otherwise indicated, text and tables refer to police data.[7] Profile data will also be presented from the Sexual Assault Centre and will be discussed under each heading when relevant. Only when tables are labelled as pertaining to the Sexual Assault Centre will they apply to those data. Wherever it is possible, a comparison will be shown between the two data sets. Data from the Sexual Assault Centre consist of 27 cases from the pre-reform period and 29 cases from the post-reform period (as described previously in Chapter 3).

4.3.1 Gender

Most of complainants were female (Table 23, below). In the prereform period (N = 50), 47 or 94 per cent of the complainants were female and in 1984-1985 (N = 120), 99 or 82.5 per cent were female. The difference was marginally significant at the .05 level.

Table 23 Gender of Complainant (Pre and Post Reform Data)

(Per cent)

	PRE N=50	POST N=120
Male	6.0	17.5
Female	94.0	82.5

T-Value	D.F.	Probability
- 1.96	168	.05

4.3.2 Age

In 1981-1982, complainants under the age of 25 accounted for 78 per cent of the recorded ages (Table 24). Essentially, the ages were distributed evenly within the three youngest categories (13 or under, 26 per cent; 14 to 17, 24 per cent; 18 to 24, 28 per cent. Complainants were younger in 1984-1985. Although 80.8 per cent of the complainants were under age 25 in the 1984-1985 period, percentages decreased considerably as age increased in the three youngest categories. In this time period, the modal category was under 13 years (40.8 per cent) followed by 14 to 17 (27.5 per cent) and 18 to 24 (12.5 per cent). Differences were not statistically significant at the .05 level.[8] It is difficult to determine whether the increased number of child sexual assault cases being reported is a result of the new legislation or whether it reflects a broader concern about reporting child sexual abuse.

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[7] Identified by Sexual Assault Centre (SAC).

Table 24 Complainant's Age (Pre and Post Reform Data)

	(Per cent)	
Age	PRE N=50	POST N=120
13 and under	26.0	40.8
14 to 17	24.0	27.5
18 to 24	28.0	12.5
25 to 49	6.0	8.3
50 and over	16.0	10.8

Chi-Square	D.F.	Significance
8.27730	4	0.0819

The trend in the post-reform period for a decrease in the ages of victims was consistent with the Sexual Assault Centre data. Most victims in files from the Sexual Assault Centre were young, but in 1984-1985 the proportion of victims under 14 rose from 44 per cent in the earlier time period to 60 per cent, while victims from 15 to 26 years decreased from 40 per cent in the prereform to 24 per cent in the post reform period. Victims who were 27 and older remained constant (16 per cent). The differences in the two time periods were not statistically significant.

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[8] The categories are essentially arbitrary and are meant to provide relatively detailed information on the distribution of complainants' ages. Therefore, one breakdown may show significance while another will not. What is clearly meaningful is the concentration of complainants under the age of 18, particularly in the post-reform period.

Table 25 Victim Age at Time of Offence (Pre and Post Reform Data)

(Per cent)

	PRE N=25	POST N=25
Under 14 years	44.0	60.0
15 to 26 years	40.0	24.0
27 and over	16.0	16.0

Chi-Square	D.F.	Significance
1.61538	2	0.4459

4.3.3 Relationship to Accused

The population in 1981-1982 was fairly evenly divided between those accused who were strangers (48 per cent) and those who were known to the complainant (52 per cent). In 1984-1985, only 24.8 per cent of the accused were strangers to the complainants (Table 26).

In 56.4 per cent of the 1984-1985 cases, the accused was a known other -- someone, not a parent, who was known to the complainant: acquaintance, close family friend, boyfriend, or other relative. The differences between the two time periods were statistically significant at the .05 level. This difference partly reflects the increased number of child sexual assault cases reported to the police since 1983. These cases are more likely to involve parents and other accused persons known to the complainant. For complainants under 18, offences involving strangers decreased from 46.2 per cent to 20.5 per cent in the post-reform period. However, even for adult complainants there is a decrease in the proportion of stranger assaults in the post reform period (from 54.2 per cent to 36.1 per cent). This finding suggests that, since the law reform, complainants are more willing to report assaults that are not stereotypical. It is difficult to separate the social effect from the legal impact, but the courts are undoubtedly processing more of these cases.

Table 26 Accused-Complainant Relationship (Pre and Post Reform Data)

	(Per cent)	
	PRE N=50	**POST** N=117
Stranger	48.0	24.8
Parent	10.0	18.8
Known Other	42.0	56.4

Chi-Square	D.F.	Significance
9.02343	2	0.0110

The same pattern of victim-offender relationships was seen in the Sexual Assault Centre data. Half the offenders were strangers in the prereform period and only 7.1 per cent were strangers in the later period. The majority of the known offenders in 1981-1982 were acquaintances (23.1 per cent), while 19.2 per cent were relatives other than a husband or father. The post reform sample was considerably different from the prereform one in that the vast majority of offenders (92.8 per cent) were known to the victims. The largest known category in 1984-1985 was a relative other than a father or husband (21.4 per cent), followed by foster/step-father (14.3 per cent).

4.3.4 Summary

There has been an increase in male complainants as well as substantially more child complainants in the post reform period. In part, because of this age difference, significantly more of the post reform assaults involved parents or known others.

4.4 Profile of Accused

4.4.1 Gender

The overwhelming majority of accused were male (Table 27). In 1981-1982, 46 of the offenders were male, comprising 97.9 per cent of the population. In 1984-1985, 99 (99.0 per cent) of the offenders were male.

Table 27 Gender of Accused (Pre and Post Reform Data)

(Per cent)

	PRE N=47	POST N=100
Male	97.9	99.0
Female	2.1	1.0

T-Value	D.F.	Probability
- 0.55	145	.5824

4.4.2 Age

In 1981-1982, the age of the accused at the time of first offence ranged from 15 to 77 years (Table 28). More than half (53 per cent) were under age 30, while 26.5 per cent were aged 30 to 39 and 20.6 per cent were more than 39. In 1984-1985, offenders' ages ranged from 15 to 74 years. Forty-one per cent of accused persons were under age 30, while 30.1 per cent were aged 30 to 39, 15.7 per cent were 40 to 49, and 13.2 per cent more than 49 years of age. Juveniles comprised 5.9 per cent of the prereform and 4.8 per cent of the post-reform accused. Age differences between the two time periods were not statistically significant.

Table 28 Age of Accused (Pre and Post Reform Data)

(Per cent)

Age	PRE N=34	POST N=83
14 to 17	5.9	4.8
18 to 24	35.3	20.5
25 to 29	11.8	15.7
30 to 39	26.5	30.1
40 to 49	11.8	15.7
50 to 59	5.9	6.0
60 and Over	2.9	7.2

Chi-Square	D.F.	Significance
3.54514	6	0.7380

4.4.3 Marital Status

Most of the information on marital status of accused persons was missing in both time periods. In cases for which information was available in 1981-1982, 68.8 per cent of the accused were either married or involved in a common-law relationship, while 31.3 per cent were single or divorced (Table 29). In 1984-1985, from available information, half were married or involved in a common-law relationship while the other half were single, separated or divorced. The difference between the pre and post reform period was not statistically significant.

Table 29 Marital Status of Accused (Pre and Post Reform Data)

(Per cent)

	PRE N=16	POST N=38
Single	25.0	23.7
Married	50.0	31.6
Common-Law	18.8	18.4
Separated/Divorced	6.3	26.3

Chi-Square	D.F.	Significance
3.26581	3	0.3524

4.4.4 Previous Criminal Record

Most of the information was missing for the prior criminal records accused persons (Table 30). For 1981-1982 cases where information was available, 12 accused persons (60 per cent) out of 20 had juvenile or criminal records. In 1984-1985, 25 accused persons (78.1 per cent) out of 32 had previous records. These percentages are almost certainly an over-estimate of the total percentage of persons with previous criminal records because information on criminal history is more likely to be recorded for offenders with prior records. Where there is no information on prior record, no information is coded. Two of the prior offences recorded for accused persons in the prereform period and four in the post reform period were of a sexual nature.

Table 30 Previous Criminal Record of Accused (Pre and Post Reform Data)

(Per cent)

	PRE N=20	POST N=32
Yes	60.0	78.1
No	40.0	21.9

T-Value	D.F.	Probability
- 1.40	50	.1616

4.4.5 Occupational Status

Occupational data were missing for most of the accused. Where information was available in 1981-1982, 17.6 per cent of the accused were unemployed (Table 31). In 1984-1985, where information was available, unemployed accused comprised an even lower percentage (8.2 per cent). The majority of accused persons in both time periods were working in unskilled or semi-skilled jobs.

Table 31 **Occupation of Accused (Pre and Post Reform Data)**

(Per cent)

	PRE N=17	POST N=49
Employed/Professional	5.9	10.2
Employed/Semi-Skilled	29.4	36.7
Employed/Unskilled	23.5	22.4
Student	11.8	18.4
Unemployed	17.6	8.2
Homemaker	11.8	2.0
Retired	---	2.0

Chi-Square	D.F.	Significance
4.83283	6	0.5654

4.4.6 Summary

There were no statistically significant differences in the characteristics of the accused between the pre and post reform time periods in police files. There was not sufficient data in files from the Sexual Assault Centre to provide reliable information about offenders.

4.5 Offences

4.5.1 Type of Offence

In 1981-1982, genital/anal intercourse accounted for 34 per cent of the sexual contact involved in offences, as opposed to only 21.1 per cent in 1984-1985. In contrast, touching and grabbing rose in 1984-1985 to 39.5 per cent from 28.0 per cent in 1981-1982. Other contact, which included attempted intercourse, fellatio, cunnilingus, masturbation, digital penetration, or a combination of offences (excluding genital/anal intercourse) accounted for 38.0 per cent in the prereform and 39.5 per cent in the post reform period (Table 32).

Table 32 Type of Sexual Contact (Pre and Post Reform Data)

(Per cent)

	PRE N=50	POST N=114
Genital/Anal Intercourse	34.0	21.1
Touching, Grabbing	28.0	39.5
Other	38.0	39.5

Chi-Square	D.F.	Significance
3.62169	2	0.1635

The decrease in genital intercourse in the later time period may result from *rape* having been replaced by sexual assault in the Criminal Code, reducing the emphasis on penetration in defining a sexual assault. It also reflects the larger number of children in the 1984-1985 data, as they were more likely than older persons to be victims of touching and grabbing. However, the differences were not statistically significant at the .05 level.

When this variable was examined separately for children and adults, there was still a decrease in intercourse, but the differences were still not statistically significant.

Data from the Sexual Assault Centre indicated slightly less than half the cases in both time periods involved intercourse.

In 20 per cent of prereform cases and 14 per cent of post reform cases, another offence occurred as well as the sexual offence (Table 33). Table 34 shows a breakdown of other offences that occurred (concurrently) with the sexual offences.

Table 33 **Nonsexual Offence (Pre and Post Reform Data)**

	(Per cent) PRE N=50	 POST N=114
Yes	20.0	14.0
No	80.0	86.0

T-Value	D.F.	Probability
0.96	162	0.337

Table 34 **Type of Nonsexual Offence (Pre and Post Reform Data)**

	(Per cent) PRE N=10 Frequencies	 POST N=16 Frequencies
Forcible Confinement/ Abduction	0	2
B&E, Robbery	2	1
Assault (Bodily Harm)	6	3
Alcohol Related	0	5
Poss. Dangerous Weapon	1	5
Gave Drugs to Victim	3	7

NOTE: More than one offence may have been reported for an offender.

4.5.2 Disclosure

In 1981-1982, the complainant most often made the first disclosure of assault to the police (38.6 per cent) followed by other (22.7 per cent), which included friend, social worker, medical person, etc. (Table 35). In 1984-1985, the first disclosure was made equally (33.3 per cent each) to the police and parents (although 27.7 per cent of the disclosure to parents was to the natural or surrogate mother) and was followed by other (26.7 per cent). Pre and post differences were not significant at the .05 level. The larger proportion of cases being reported to parents, especially mother reflects the larger proportion of child complainants in the post reform sample. When first disclosure between the two time periods was compared separately for children and adult complainants, the differences were significant for children, but not for adults.

Table 35 To Whom Complainant Fi8rst Disclosed Assault (Pre and Post Reform Data)

	(Per cent)	
	PRE N=44	POST N=105
Mother, Father, Parents (or Surrogate)	20.5	33.3
Sibling, Other Relative	18.2	6.7
Police	38.6	33.3
Other	22.7	26.7

Chi-Square	D.F.	Significance
6.26414	3	0.0994

Table 36 shows that 75 per cent of the initial disclosures in both time periods were made within 24 hours of the offence. However, the pattern was different for adult and child complainants. For adults, 81.8 per cent of prereform cases were disclosed within 24 hours compared with 97.2 per cent of adult post reform cases. For children, 72.7 per cent of the prereform cases were disclosed within 24 hours, compared with 65.6 per cent of post-reform cases. None of these differences was statistically significant.

Table 36 **When was Disclosure made (Pre and Post Reform Data)**

(Per cent)

	PRE N=44	POST N=100
Immediately (< = 24 hrs)	75.0	75.0
25 - 48 hours	2.3	2.0
49 hours - 7 days	2.3	3.0
8 days - < 1 month	9.1	4.0
1 - 2 months	4.5	7.0
3 - 4 months	---	3.0
5 - 6 months	2.3	---
11 - 12 months	---	.7
Over 1 - 2 years	---	2.0
Still ongoing	4.5	3.0

Chi-Square	D.F.	Significance
6.91200	9	0.6463

In 1981-1982, the majority of cases (67.3 per cent) were reported to the police within 24 hours of the assault (Table 37). An additional 10.2 per cent were reported within 48 hours. However, reporting was delayed from eight days to one year in 20.4 per cent of the cases. In 1984-1985, 57.5 per cent of the cases were reported to the police within 24 hours of the assault with an additional 5.3 per cent reported within

48 hours. Reporting was delayed from eight days to a year in 23.9 per cent of the cases and from over one to five years in 8.8 per cent. Differences between the pre and post legislation periods were not significant, although 37.2 per cent of post reform cases were reported more than 48 hours after the occurrence compared with 22.5 per cent of prereform cases. This reflects the larger number of child complainants who are less likely to report an assault immediately. When this variable was examined separately for adults and children, there was an increase in post-reform cases being reported within 48 hours (from 79.2 per cent to 91.9 per cent) by adults, while for children there was a decrease in post-reform cases (from 76 per cent to 48.7 per cent).

Table 37 When Police Report was Made (Pre and Post Reform Data)

(Per cent)

	PRE N=49	**POST** N=113
Immediately (< = 24 hrs)	67.3	57.5
25 - 48 hours	10.2	5.3
49 hours - 7 days	2.0	4.4
8 days - < 1 month	8.2	7.1
1 - 8 months	10.2	15.0
9 - 12 months	2.0	1.8
Over 1 year	---	8.8

Chi-Square	D.F.	Significance
7.26927	6	0.2967

In both time periods, offences were most often reported by the complainant (60 per cent in 81-82 and 59.8 per cent in 84-85). The next most frequent reporter was the natural or surrogate mother who reported in 8.3 per cent of the 1981-1982 cases and 13.7 per cent of cases in 1984-1985. A father (or surrogate) reported in slightly more cases in the post reform than in the prereform period as well

(6 per cent and 2 per cent respectively). Any differences reflect the increased number of child complainants who were more likely to have offences reported by parents. In Table 38 (below), parents are combined with others (social workers, relatives, school, employer, friend, spouse, father, and hospital) because of so few cases in those cells. There are no overall differences between the two time periods at the .05 level.

Table 38 Offence Reported by Whom (Pre and Post Reform Data)

(Per cent)

	PRE N=50	POST N=117
Complainant	60.0	59.8
Other	40.0	40.2

T-Value	D.F.	Probability
0.02	165	.984

In 1981-1982, the majority of the offences (64.1 per cent) were reported by telephone to police. Only 25.6 per cent were reported to the police in person. This was not the case in 1984-1985 where the majority of offences (48.2 per cent) were reported in person to the police (Table 39). This change was greatest for child complainants. There was very little difference between the two periods for adults. The differences between the two periods were statistically significant at the .05 level.

Table 39 Initial Complaint after Assault Made (Pre and Post Reform Data)

(Per cent)

	PRE N=39	POST N=114
In person to police	25.6	48.2
Telephoned police	64.1	43.0
Other	10.3	8.8

Chi-Square	D.F.	Significance
6.24497	2	0.0440

4.5.3 Circumstances of Offence

In 1981-1982, offences most commonly took place at the complainant's residence (20.8 per cent). In 1984-1985, the most common place of offence was the residence of the accused (26.5 per cent), followed by the residence of the complainant (20.4 per cent, Table 40). Differences were not statistically significant.

Table 40 Place of the Offence (Pre and Post Reform Data)

	(Per cent)	
	PRE N=48	**POST** N=103
Complainant's residence	20.8	20.4
Residence of the accused	16.7	26.5
Common residence	12.5	18.6
Other residence	4.2	5.3
Vehicle	14.6	3.5
Public street/lane/park	18.8	15.1
Other place incl. public bldg., bar	12.5	10.7

Chi-Square	D.F.	Significance
8.63660	6	0.1951

Data from the Sexual Assault Centre were similar to those of the police. (See Table 41)

Table 41 Place of the Offence (Pre and Post Reform Data)

(Per cent)

	Police		Sexual Assault Centre	
	PRE N=48	**POST** N=113	**PRE** N=23	**POST** N=25
Residence	54.1	70.8	52.2	80.0
Other Place	45.9	29.2	47.8	20.0

4.5.4 Physical Force and Injury

In the majority (85.7 per cent) of the 35 cases in 1981-1982 where information was available, complainants claimed that the accused used physical force. In 1984-1985, the use of physical force was reported in 63.3 per cent of the cases (Table 42). Differences between the time periods were statistically significant at the .05 level. The most common form of force (Table 43) was grabbing and restraining (51.9 per cent, 1981-1982; 58.4 per cent, 1984-1985).

Table 42 Physical Force Used by the Accused (Pre and Post Reform Data)

(Per cent)

	Police		Sexual Assault Centre	
	PRE N=35	**POST** N=98	**PRE** N=15	**POST** N=12
Yes	85.7	63.3	93.3	75.0
No	14.3	36.7	6.7	25.0

T-Value	D.F.	Probability
2.46	131	.0136

Table 43 Nature of force Used (Pre and Post Reform Data)

	PRE N=29		POST N=61	
	Frequencies	Per cent	Frequencies	Per cent
Choking	0	0.0	1	1.6
Slapping, Punching, Biting	10	34.5	11	18.0
Grabbing, Restraining	27	93.1	56	91.8
Verbal Intimidation	7	24.1	18	29.5
Other	8	27.6	10	16.4

Note: Percentages add to more than 100 because more than one response may have been reported for an incident.

In both time periods, most complainants (92.3 per cent in 81-82, and 85.4 per cent in 84-85), reported that they resisted the advances of the accused (Table 44). In 1981-1982, the most common form of resistance was a combination of verbal and physical (80 per cent). In 1984-1985, 64 per cent of the complainants used both verbal and physical resistance while 25.3 per cent used only verbal resistance (Table 45). Neither of the tables concerning resistance showed statistically significant differences between the pre and post legislation periods.

Table 44 Resistance by Complainant (Pre and Post Reform Data)

(Per cent)

	PRE N=39	POST N=89
Yes	92.3	85.4
No	7.7	14.6

T-Value	D.F.	Probability
1.09	126	.2758

Table 45 Type of Resistance (Pre and Post Reform Data)

(Per cent)

	PRE N=35	POST N=75
Verbal	14.3	25.3
Physical	5.7	10.7
Both	80.0	64.0

Chi-Square	D.F.	Significance
2.86294	2	0.2390

Injuries

Injuries were reported in only 11.6 per cent of cases in 1984-1985, while 24.5 per cent of the 1981-1982 complainants were injured (Table 46). This difference was significant at the .05 level. Adults were about three times more likely than children to report injury in both time periods. Data from the Sexual Assault Centre on whether or not injuries occurred were missing for approximately half of the cases in both time periods. Most of the victims (12, or 70.6 per cent) in the pre-reform sample suffered injuries; in the post-reform sample only two victims (12.5 per cent) were cited as having injuries. The most common injuries indicated in the 12 pre-reform cases for which there was information were bruises and scratches (N=9). Information on the type of injury sustained was recorded for only two of the post-reform cases, and bruises and scratches were cited for both.

Table 46 Any Injuries Suffered by Complainant (Pre and Post Reform Data)

(Per cent)

	Police		Sexual Assault Centre	
	PRE N=49	POST N=112	PRE N=17	POST N=16
Yes	24.5	11.6	70.6	12.5
No	75.5	88.4	29.4	87.5

T-Value	D.F.	Probability
- 4.04	31	< 0.001

Although information was missing in nine of the pre and 16 of the post-reform files, 83.3 per cent of the pre-reform cases as compared with 30.8 per cent of the post-reform cases indicated that victims went to a medical facility (Table 47). It is not entirely clear why this difference exists, though it is probably because the proportion of injured victims declined so dramatically (from 70.5 per cent to 12.5 per cent, Table 46). In 1981-1982, 69.7 per cent of the complainants received medical attention while only 31.7 per cent of the 84-85 complainants received medical attention. Differences on this variable were statistically significant at the .001 level.

Table 47 Complainant Attended Medical Facility (Pre and Post Reform Data)

(Per cent)

	Police		Sexual Assault Centre	
	PRE N=49	**POST** N=112	**PRE** N=17	**POST** N=16
Yes	64.7	31.7	83.3	30.8
No	30.3	68.3	16.7	69.2

T-Value	D.F.	Probability
(1) 3.73	113	< .001
(2) 3.26	29	.004

4.5.5 Use of Alcohol

Information about alcohol use was missing in half the prereform and almost two-thirds of the post reform period. As seen in Table 48 (below), in most cases use of alcohol was only documented in files when it was present in the complainant and/or accused. Therefore, the overall percentages of alcohol involvement must be regarded with caution. In cases for which information was available, the pre and post reform periods were very similar on the extent of alcohol use.

Table 48 Use of Alcohol (Pre and Post Reform Data)

	(Per cent)	
	PRE N=25	**POST** N=41
Complainant & Accused	44.0	41.5
Complainant Only	4.0	2.4
Accused Only	28.0	34.1
Complainant=Yes/Accused No Info.	12.0	4.9
Accused=Yes/Complainant No Info.	8.0	4.9

Chi-Square	D.F.	Significance
2.76970	5	0.7354

4.5.6 Summary

Although the most common type of sexual offence involved touching and grabbing, a larger percentage of offences in the earlier time period involved genital intercourse. This may be a result of the de-emphasis on penetration in defining sexual assaults in the post reform period. Offences were typically reported on the telephone by the complainant, usually within the first 24 hours of the offence (or last offence if ongoing). Physical force was used less often in the post reform period and a smaller percentage of complainants were injured in that group. This could be due to relaxation of the corroboration requirement to prove that an offence took place, so that more cases would be reported in which the complainant was not injured. It could also be a result of the larger number of children in the post reform period, who were also less apt to be injured.

4.6 Nature of Contact With Sexual Assault Centre

(a) Time of Contact

In more than one-third of the cases in both the prereform (38.5 per cent) and post reform (34.8 per cent) samples, the agency was contacted within 24 hours of the offence (Table 49). An additional 26.9 per cent (pre) and 21.7 per cent (post) were reported after 24 hours but within a week. Reporting was delayed for more than one year in 7.7 per cent of the prereform cases and 17.4 per cent of the post reform cases.

Table 49 How Soon After Assault Agency Contacted (Pre and Post Reform Data (SAC))

	(Per cent)	
	PRE N=26	POST N=23
Within 48 hours	42.3	43.5
2 days - 7 days	23.1	13.0
More than 7 days	34.6	43.5

Chi-Square	D.F.	Significance
0.92003	2	0.6313

(b) Person Reporting Case to Centre

The offence was reported by the victim in 69.2 per cent of the prereform cases and in 62.1 per cent of the post reform (Table 50). The victim's mother reported in 20.7 per cent of the cases (post) and 11.5 per cent (pre). Differences between the two samples were not statistically significant.

Table 50 **Who Reported Offence to Agency (Pre and Post Reform Data (SAC))**

	(Per cent)	
	PRE N=26	**POST** N=293
Victim	69.2	62.1
Relative	11.5	31.0
Other	19.2	6.9

Chi-Square	D.F.	Significance
4.13438	2	0.1265

4.7 Nature of Reports to Police

(a) Whether a Police Report Was Made

The majority (96.3 per cent) of the offences in the prereform sample were reported to police, while 75 per cent of offences in the post reform sample were reported to the Police (Table 51). This difference is statistically significant.

Table 51 **Offence Reported to Police (Pre and Post Reform Data (SAC))**

	(Per cent)	
	PRE N=27	**POST** N=24
Yes	96.3	75.0
No	3.7	36.0

T-Value	D.F.	Probability
- 2.18	49	0.037

Type of offence and relationship between victim and offender were examined to determine whether there was a relationship between these factors and whether a report was made to the police. There was very little difference between the two samples. When the offence involved genital intercourse, it was as likely to be reported after the law reform as before the law reform. Of the nine cases involving intercourse in the earlier sample, 88.9 per cent were reported, and of the 11 cases in the later sample, 90.9 per cent were reported to the police. Thus the decrease in the proportion of offences reported in the post reform period was for offences that did not involve intercourse.

(b) Person Reporting Case to Police

In most cases, the victim made the report to the police (Table 52 below). Victims reported in 62.5 per cent of the prereform cases and in 66.7 per cent of the post reform sample. All complaints were reported to the police formally.

Table 52 Who Reported Offence to Police (Pre and Post Reform Data (SAC))

(Per cent)

	PRE N=24	POST N=12
Victim	62.5	66.7
Other	37.5	33.3

T-Value	D.F.	Probability
0.24	34	0.813

(c) Founded or Unfounded by Police

Most reports were classified by the police as founded (Table 53 below). This was true for 88 per cent of the prereform sample and 94.1 per cent of the post reform sample. Reasons given for not founding the three complaints in the prereform sample included not enough evidence, inconsistent statements given by the complainant, and a later denial of the offence having occurred. In the one post reform case that was unfounded, the reasons stated in the file pertained to inconsistent statements given by the complainant, a history of psychiatric problems, and not enough evidence to proceed.

Table 53 Report Accepted by Police (Pre and Post Reform Data (SAC))

	(Per cent)	
	PRE N=25	**POST** N=17
Yes	88.0	94.2
No	23.0	5.9

T-Value	D.F.	Probability
0.65	40	0.519

(d) Investigations Terminated by Police

Eight investigations in the prereform sample and one in the post reform one were terminated by the police. In the prereform sample, the following reasons were given: insufficient evidence (N=5); credibility of the complainant was questioned (N=3); victim would not identify the suspect (N=2); victim could not identify the suspect (N=2); and advised by crown attorney not to proceed (N=2).[9] In the post reform sample, there was no information as to why one case was dropped. The decrease in the post reform cases that were terminated by the police may suggest that, since the passage of Bill C-127, there is less of a tendency by police and crown attorney to use their discretion in filtering out questionable complaints. A change in the recording practices of personnel from the Sexual Assault Centre between the two time periods could also explain the difference. As previously indicated, one individual seemed to be responsible for most of the entries in the 1985 files, and the information was less complete.

(e) Investigations Terminated by Victim

There were also differences between the two time periods in victims' requests to terminate proceedings. Five victims in the prereform sample and one in the post reform sample requested that the investigation be terminated. In the prereform sample, no explanation was given in one case and each of the remaining four requested termination for a different reason: 1) did not want to talk about it any more; 2) was afraid her husband would find out and blame her; 3) forgave the offender; and 4) did not want charges laid. In the post reform sample, the victim asked for the charge to be withdrawn because the offender, her estranged husband, believed he was within his rights and convinced her that the sex was consensual.

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[9] Reasons for not proceeding exceed the number of cases that were terminated because more than one reason was given for some cases.

4.8 Referred to Centre From Another Agency

In 85.2 per cent of the prereform sample, victims were referred to the Sexual Assault Centre from another agency (Table 54). These included police (11), Alberta Social Services (5), hospital (2) and other (5). Post-reform referrals from other agencies dropped to 37.0 per cent and these were from Alberta Social Services (2), police (1) and other (7). Included in other were: YWCA Women's Crisis Centre, Sifton Children's Centre, Schools, crown's office, Alberta Mental Health and Family Planning. The differences were statistically significant at the .05 level.

Table 54 Referral to Centre (Pre and Post Reform Data (SAC))

	(Per cent)	
	PRE N=27	**POST** N=27
Yes	85.2	37.0
No	14.8	63.0

T-Value	D.F.	Probability
- 4.10	52	< 0.001

5.0 IMPACTS OF BILL C-127 ON PRACTICES, OUTCOMES AND ATTITUDES

5.1 Introduction

This section presents an integrated summary of qualitative data gathered in interviews conducted with six officers from the Lethbridge City Police and the Lethbridge RCMP, eight crown attorneys, six defence lawyers, five people from the Sexual Assault Centre, and four physicians from the Lethbridge Emergency Medical Services at St. Michael's Hospital. Respondents all had experience before and after the 1983 sexual assault amendments and were asked about their perception of any changes in practices, outcomes and attitudes that had taken place since the law reform. Five sexual assault victims who had experience with the criminal justice system since the implementation of Bill C-127 were also interviewed. Their experiences and segments of the court monitoring component will be discussed wherever it is relevant to do so, but a more complete summary of the victims' interviews and court cases is provided in Chapter 6.

5.2 Changes in Reporting and Processing

5.2.1 The Typical Assault

Lethbridge police interviewed did not perceive sexual assault as the classic violent attack by a stranger. Police indicated that the typical sexual assault is usually nonviolent in the sense that the victim has no physical injuries. They also described the typical assault as usually involving touching, fondling, or grabbing, with no weapon used. Alcohol or drugs are often present in victim, offender or both. The victim usually knows the offender, with typical scenarios being an ex-husband assaulting his former wife, or a man with his date who goes further than she wishes. The victim reports the event while very upset, with the account often confused. This can leave the victim and police somewhat wary of each other.

The sexual assault cases monitored in court during the study did not involve physical violence. All were classified as s. 246.1, except one case that included a charge of s. 246.2. Many also included other charges; 157 was the most common.

5.2.2 Changes in Reporting Over Time

The number of sexual assault cases reported to police is increasing. Police suggested that victims are more willing to report; this was seen as being partly of the existence of support groups like the Sexual Assault Centre, and partly because the new openness about sexuality. Police added that the reporting of old incidents is new, as is the phenomenon of runaways who are frequently assaulted, but who usually do not follow through with their complaints.

Defence lawyers felt that rape is more difficult to prosecute now and that it is easier for crown attorneys to establish a case, one said, "They are coming out of the woodwork: it's unbelievable. They're all legal aid, low-income, farm laborers. It's a clientele I've never seen before. I've talked to other lawyers -- it seems like 30 per cent of the person crimes are sexual offences. I've never seen this before." It also was felt that more complainants are younger now and there are many old cases coming forward.

5.2.3 Charges

Whether or not to lay a sexual assault charge is basically a police decision, made in consultation with the complainant. The decision to lay the charge requires the approval of a senior officer. The decision as to the exact charge is often made through consultation with the crown attorney, with the main considerations relating to the nature and quality of the evidence and the credibility of the complainant. Five of the six police officers said they would be inclined to enter maximum charges. This facilitates plea bargaining and a guilty plea. One deplored the practice of charging high, attributing it to the new school of lawyers. Charges are usually laid through a senior officer, at least a senior constable, who may be overruled by an inspector. Crown prosecutors perceived a change in the charges being forwarded by the police, mainly due to the increased number of child cases. "Sexual touching is now pursued. Cases which would formerly have been common assault are now pursued as sexual assault (e.g., a boy grabs a girl's breasts)." Victims who are prostitutes and cases where the victim and accused are married remain rare.

5.2.4 Proceeding With Prosecution

Most prosecutors thought the crown attorneys used their discretion not to proceed less often for sexual assault than for other crimes; two thought it was used about the same and one thought discretion was exercised more often. They did acknowledge pressure to proceed even with weak cases. One termed this legal buckpassing, letting courts tell victims that their cases are weak and thereby damaging the credibility of other prosecutions. Prosecutors did report that in weak cases it is important to give the complainant a very realistic picture of what is likely to happen in court, as well as the chance of success.

Several crown attorneys noted that more guilty pleas occur, perhaps because the charge is less serious now and sentences are lower. One noted that when a rape case got to trial in the past, it was a tight case and a conviction resulted in a sentence of probably four years; now a sentence of two years is more common. Defence will plead guilty in exchange for reduced sentence or noncustodial sentences if the case is of sexual touching. Defence sometimes has an eye on the court's recognition of the trauma to a victim of testifying and will use a guilty plea and that recognition in exchange for lighter sentences.

Although prosecutors reported that they seldom use sanctions against complainants who do not want to proceed, they will require a compelling reason. The victim's own health and welfare is a consideration, especially if the victim is a child. If the victim is being pressured to withdraw by a family member, they will not comply. As one reported, "We used to withdraw readily. Then the women's groups criticized us. We went the other way -- refused to withdraw, except in a few cases, and the women's groups criticized us for that. Now I think we've got a pretty good balance."

5.2.5 Polygraphs

In Lethbridge, the use of a polygraph is mainly a police matter. Crown attorneys may use the results when interviewing the complainant, or, if a case hinges on credibility, may actually request that a test be given. The polygraph is considered only one test among many, and not an important one to the prosecution. Prosecutors do not know how much the police use the device and only one of eight indicated that a polygraph was requested once by a complainant. In the police file data, there was no indication of a polygraph administered in 1981-1982, but there were four given to an accused and one to a complainant in 1984-1985. Two of the victims interviewed said they were asked to take polygraphs.

5.2.6 Plea Bargaining

There was slight agreement among defence lawyers that the new law makes it easier to negotiate cases. The negotiations, however, don't necessarily deal with movement from one level of sexual assault to another (for example, from s. 246.2

to s. 246.1). Rather, the negotiations centre around the number of counts that will be prosecuted and the recommendation for sentence by crown counsel. One of the two most experienced counsel thought that sexual assault is generally non-negotiable, and almost all thought that these cases are generally harder to negotiate than are other crimes against the person and consequently are negotiated less frequently. Negotiation often resulted in a decrease in number or seriousness from initial charges to conviction. This appears to be especially true when a guilty plea was entered, except when the initial charge was one count of sexual assault (s. 246.1). Simple sexual assault was pleaded down to simple assault in only two cases.

5.2.7 Convictions

Most prosecutors believed that the legislation has increased the chances of a conviction, all things being equal. Overall, however, they felt that the cases that got to court before Bill C-127 were definite and therefore easier to prosecute. There had to be corroboration and a recent complaint; the judge would often make comments bringing this evidence to the focus and attention of the jury, thereby enhancing the importance of the evidence and the case. Now many more cases are coming forward and some are difficult to win, even with the new legislation.

It was not obvious to workers from the Sexual Assault Centre that there has been any change in the rate of conviction. "What is committed for trial at Provincial Court is almost always negated by Queen's Bench Court."

5.2.8 Length of Sentences

Lawyers were able to provide their impressions only on whether sentencing had changed with Bill C-127. Unlike prosecutors who thought sentences were shorter, defence lawyers believed that sentences for sexual offences have been getting longer for some time, possibly beginning before 1983. They thought the main reason for this was public pressure. "Yes. They are higher. Sexual assault has a high profile; society demands it. It's like impaired driving, wife beating. The Bill (C-127) didn't change things: society's attitudes did." One noted that while the longer sentences are intended to deter such offences, they encourage people to bring more complaints to court, thereby giving the impression that lengthy sentences don't deter.

Generally speaking, defence lawyers found the sentences appropriate: "I can't think of any that have appalled me". Several noted that mentally ill offenders will not be deterred and must be given treatment.

Some prosecutors thought the penalty for sexual assault (C.C. 246.1) should be increased. One thought repeat offenders should be liable to a life sentence. "It has to be aggravated sexual assault for a life sentence, but some guys get out and repeat and repeat and never commit aggravated." Also, "There should be more than a six-month sentence allowed for summary conviction on a sexual offence."

There was agreement among workers at the Sexual Assault Centre that the sentences do not reflect the seriousness of sexual assault. No one saw any direct effect from Bill C-127 on sentencing patterns.

5.3 Change in Designation

Police felt that the new legislation has made some aspects of investigation easier as there is no longer a need to present proof of penetration. Although proof of penetration has lost a great deal of its previous importance, prosecutors felt it is very important as corroborative evidence, especially where there is complete denial by the accused. Defence lawyers commented on the vast increase in sexual assault cases that do not involve intercourse. An increase in male victims in (1984-1985) police files could result from a change in the designation and definition. Police thought the three levels of sexual assault made it easier to lay a charge. The definition of the term sexual was seen to be much broader, but police said they need to think in terms of evidence and therefore are inclined to define bodily harm as something that will last till the trial. This may be taken literally, or in the form of medical testimony. Anything that does not require medical attention is problematic from the police perspective. Police continue to feel the urgency to get the sexual assault victim to the hospital, not so much for proof of penetration, but for proof of injury that may be convincing in court. Files from both the police and the Sexual Assault Centre showed a significant decrease in victims being seen at a medical facility in the post reform period.

All prosecutors who were interviewed agreed that bodily harm is very difficult to define and that the context of the case may determine the matter. According to one respondent, "Holding her arm is not, bruising it is." Another suggested that in the Court of Queen's Bench, anything where there's blood will be treated as bodily harm, while another listed broken bones, cuts requiring stitches, and bruising causing discomfort as requirements for defining bodily harm.

Crown prosecutors felt that if there was a shift in focus from the sexual to the assaultive aspect of the offence, it was slight. Some, who thought no change at all had occurred, believed the public's perception had not changed and neither had that of the judges. It was noted that it is still the sexual aspect that must be proved.

There were some fairly important differences in interpretation among the crown attorneys regarding the definition of sexual assault. Some felt it was very much a matter of perception and interpretation. A hug may be a hug or it may be a sexual assault. They also reported that a sexual assault must be defined in the context of a relationship, and some reported that there must be a perception of sexual arousal or gratification on the part of the perpetrator. Others argued that a sexual assault was any intentional contact with any sexual part without consent.

5.4 Complainant's Character and Previous Sexual History

Prosecutors said there had only been one case in Lethbridge since 1983 where the complainant's previous sexual history was considered relevant. Crown attorneys reported that this issue usually has no bearing on the case at hand, but the immediate sexual history may be important, e.g., "did she have sex with three other guys at the party?"

According to the prosecutors, the crown attorneys no longer need to prepare for attacks against the victim's character. Although sexual histories cannot be raised, two prosecutors argued that the defence is still constantly trying to discredit the complainant in other ways. The defence can no longer go on "massive fishing expeditions" regarding the victim's character; now defence attorneys mainly concentrate on mistakes of fact, alibis and complete denial. Defence lawyers admitted that the old practice of hiring a private investigator to follow complainants around is "a thing of the past." Prosecutors, however, felt that because weaker cases are coming to trial, "cross-examination is tougher since the case is based on the victim's testimony."

Four lawyers felt that the restrictions regarding the complainant's character were inappropriate. One said, "Some restrictions might be appropriate, but they have gone too far. You might look at sexual assault as a unique aspect of criminal law. It's totally different from other kinds of criminal aggression against the person." Another suggested that "It may be unconstitutional anyway, given a few recent decisions." A third thought, "There should be a distinction between sexual activity (reputation) and sexual experience (e.g., overhearing, viewing films)". This respondent also said, "Every case I've had contained factors suggesting the complainant had fabricated."

The two who agreed with the restrictions noted that the issue seldom played an important role in the decision for conviction or acquittal: ". . . glad to get rid of (it) . . . such an archaic section of the law."

Although some lawyers favoured evidence on the complainant's character, none has tried to get such evidence admitted since 1983, though some had done so before then. One, who had never tried it, said, "If you attack the character of the victim, judges will be biased against you. I've never had the nerve to try it."

Although Bill C-127 restricted the defence's ability to cross-examine the complainant about her (or his) sexual reputation or character during the trials that were monitored for the study, the usual defence strategy was to deny that the event took place and then attack the credibility of the complainant. This certainly is an attack on the general reputation and character of the complainant. In none of the trials monitored did the defence attempt to cross-examine the complainant about her or his sexual reputation or character, but in at least four of the trials there were attempts to discredit the complainant by, for example, mentioning difficulties with parents because the child habitually told lies. In a preliminary hearing, there was an attempt to blame someone else for the pregnancy that resulted from the assault. In another case, which also was a preliminary, the defence attempted to question the complainant about her children who were not in her custody, thereby casting doubt on her character.

5.5 Recent Complaint

According to all police respondents, the law has made a lot of difference. Prior to Bill C-127 police would not have proceeded with many cases that are dealt with now. Still, the notion of recent complaint remains very important, since evidence disappears over time.

Prosecutors felt that recency of complaint remains an issue. Although it is no longer a requirement, it often creeps into trials and when it does not, some crown attorneys suggest that it ought to. "Recent complaint should be brought back, not as a requirement, but as an option." "It used to be allowed in as an exception to the hearsay rule, but is not allowed in now." It is often a key component of a complainant's evidence. "The crown should be able to lead such evidence."

All prosecutors reported they still consider recency of complaint important for a successful conviction. Some suggested that the importance of recent complaint will decline as the complainant is better understood. They also felt that the courts are beginning to comprehend and understand why a victim, particularly a child, may not tell someone right away. In general, recent complaint, according to one crown attorney "aids credibility; it's part of corroboration."

Defence lawyers thought, however, that there had been an observable difference in the number of old cases coming forward, particularly of the familial type. It was also felt that despite the change in the legislation, lack of recent complaint can harm the crown attorney's case. "On the surface it would not be damaging, but, if you play the defence well, so that somehow, somebody on the jury gets knowledge that there wasn't recent complaint, it could be damaging. A jury would be instructed that the evidence is inadmissible, but people are people."

In the court cases monitored, in spite of the restrictions on questioning about recency of complaint, it was found that complainants were still questioned about delays in reporting. However, the law enabled some older cases to be prosecuted that likely would not have been brought to court prior to the abrogation of recent complaint. The file study, however, indicated that the percentage of cases found guilty at trial increased from 25 per cent in the prereform period (two of eight) to 36.8 per cent (seven of 19), so the likelihood of successful prosecution was greater following Bill C-127. However, in the cases monitored, there were no convictions at trial.

5.6 Corroboration

Police report that corroboration is often difficult to get in sexual assault cases, especially in child sexual assault cases. It was felt that the legislation has made a very significant impact on whether a charge can be laid and that Bill C-127 facilitates prosecution. Prosecutors felt that the use of physical force and evidence of injury to complainants were both important considerations. The absence of physical force might not be important, but its presence would influence the crown attorney to proceed. " . . . it shows evidence which is good and ties to corroboration. Those were things judges looked for in rape cases." When there is evidence of injury, the crown attorney will most likely proceed. It relates to both corroboration and consent and, as one stated, "If there are bad injuries, you are guaranteed success." Corroboration was said to remain very important. "As with any criminal prosecution, if you can get it, it improves chances of success." Defence lawyers saw the change regarding corroboration as making their job more difficult; however, they still saw lack of corroboration as somewhat damaging to the crown attorney's case.

5.7 Consent

The major change reported by prosecutors regarding the difference between prosecuting under the old rape law and the new sexual assault law is that the emphasis is now more firmly on consent rather than on whether penetration occurred. The new law puts the emphasis on broader issues, with the changes in corroboration and recent complaint being the most significant. Some prosecutors argued that if there is any evidence to suggest consent, then some evidence of resistance is very important. Still, under some circumstances one cannot expect resistance. For example, an assailant may have said, "Stop that or I'll kill you." As one prosecutor said, "Should a woman have to resist to the point of injury? No, but it helps in court.", especially if it is manifested in some objective fashion. Crown attorneys also reported that they are beginning to understand that the child victim is usually in no position to resist. With independent evidence, honest belief in consent could be quite compelling, but prosecutors thought such instances would be very rare.

In the view of defence lawyers the accused's honest belief in the complainant's consent could be very damaging to the prosecution's case. This was thought to be a factor only if the complainant were an adult. In the cases monitored during the study, however, consent was an issue pursued by defence regardless of age.

The defence was allowed to ask the victim if she had really tried to get away, if she said no, or why she didn't tell someone "if it was really that bad?" One girl was questioned as to whether she was wearing "regular shorts" or "short shorts" while in the accused adult male's presence. The implication was that she might have provoked the assault.

5.8 Spousal Immunity

Prosecutors felt that the law had not encouraged wives to report sexual assaults. One said, "Can't get away from the case that if there's a relationship such as husband and wife or common-law, it will weigh in the judgment as to the determination of guilt." Another cited the example of a total stranger who pinches a woman's buttocks: "There's nothing to indicate consent, but if a husband pinches his wife or even goes further it's a different question. You have to look at the relationship."

During interviews with representatives of the Sexual Assault Centre, the interviewer noted that of 137 women who stayed at Harbour House (shelter for abused women) in 1986, 36 reported sexual abuse in addition to other abuse. Very few reported the sexual part of the abuse to police. Most are in dismal domestic situations and fear reprisal. After wives enter the shelter, husbands often persuade them not to report and to come home. Harbour House does not have the facilities to provide the support needed to proceed and it was hoped that a new sexual assault centre would provide such support.

Generally, the reasons for not reporting involve fear of the police and the justice system, fear of the offender, social stigma, a sense of shame and self-blame, and lack of a support group.

5.9 Changes in the Courtroom

Defence lawyers generally felt the new legislation has made their work harder. Although most said they had not substantially altered their courtroom strategies, some lawyers suggested that since recent complaint and corroboration have lost their importance, cross-examination has become the critical process.

5.10 Attitudes Toward Bill C-127

In general, police believe the new law does not violate the defendant's right to a fair trial, that it was necessary and brought about significant changes. They also believe the changes brought the law in line with public opinion, although it may not be receiving full support from the courts.

Prosecutors agreed that the defendant's rights are not violated, but agreed strongly on little else. Some of the prosecutors thought that the amendments were necessary but indicated that the courts are not totally following the spirit of the Bill C-127 amendments. Finally, there was some disagreement about the impact of the Charter of Rights on the legislation. Some respondents pointed to the time frame over which evidence can be obtained which might limit the "recency-of-claim" aspect of the legislation. Some respondents also indicated that the rules surrounding confessions could affect the process.

Defence lawyers slightly disagreed that the defendant's rights are violated and that the amendments were unnecessary. There was a solid belief that the courts are following the spirit of Bill C-127 and slight agreement that the legislation is fine as it is, with no further changes necessary.

Representatives of the Sexual Assault Centre considered the most significant changes brought about by the passage of Bill C-127 to be the ban on the victim's sexual history, the emphasis on the assaultive aspect, changes regarding recency of complaint and corroboration, and no requirement of penetration. The new legislation was seen as a significant improvement; no one wants to go back to the old rape laws. It was felt that the three levels of sexual assault seem to enable the Crown to proceed more readily with the less serious cases.

5.11 Media

Only a few comments were made concerning the role of the media in sexual assault cases. Most felt that the Lethbridge media were quite responsible. There was some dissatisfaction with The Lethbridge Herald as too sensationalist in its treatment of cases involving children.

6.0 NATURE OF THE VICTIM'S EXPERIENCE

This section describes the nature of the victim's experience as perceived by the respondents described in Section 6, as well as the first-hand experiences related by victims. In addition, this section includes a complete summary of the trials and hearings that were monitored.

6.1 Specialized Training for Agency Personnel

Respondents reported that police training for sexual assault cases varied from no specific training to attendance at seminars dealing with Bill C-127. Regular police training includes sections on sexual assault such as the Crimes Investigation Course. There was general agreement among respondents that good training in general investigative techniques is basic to all police work, including work on sexual assault. Police believe that this knowledge of proper procedure in investigation is what distinguishes them from social workers and other crisis support workers.

Police assigned to work specifically with sexual assault cases are the ones who attend special seminars on the topic. Such officers strongly affirmed the value of such training. Typical responses from the interviews were: "You need training to talk to a woman in distress" and "You can't talk to a child the way you would to an adult. It takes special training."

Respondents also reported that specific instruction as to how to proceed under the new legislation tends to be passed on from crown attorneys to the police.

The police seem to be the least affected by the changes in legislation. Their perception is that they are more influenced by changes in "public opinion" to take "minor" cases more seriously. The fact that some police are specializing in sexual assault cases is seen as a positive change.

Two physicians who were interviewed indicated that they had received some training in handling sexual assault cases. This training was taken as part of courses in trauma medicine, however, and not as a special, separate course. The other three said they had no training in dealing with sexual assault cases and indicated that a course in the psychological, emotional aspects of sexual assault would have been helpful.

All of these physicians noted that at the time of their medical training (ranging from about eight to 35 years ago), there was no training available in any area related to sexual assault. Doctors said they each treated two-to-four cases in the last year.

6.2 The Victim's Experience in the Criminal Justice System

There was some agreement from prosecutors interviewed that the victim's experience in the criminal justice system has become slightly less traumatic over the past five years. None suggested that the experience has become more traumatic. It was recommended that there be "specialization in crown offices so only those most comfortable with sexual assault victims handle those cases." There was also strong support among prosecutors for more victim support services. They did not feel they were set up to deal with victims' needs, certainly not in the weeks and months between appearances. Some questioned whether this is an obligation of the Crown. Although they felt that they were not doing too badly in meeting victims' needs, most said they would like more time with victims prior to trials.

Defence lawyers noted that the "stigma of rape" has been removed, so it is smoother both for the victim and the system. Defence believes that the new law has not made their work any easier; all but one responded that it was more difficult. It was suggested that the law reform may have made prosecution and defence more difficult. Cases now tend to be one-on-one situations, where both crown and defence attorneys have to work hard to make their witnesses appear credible.

Workers from the Sexual Assault Centre felt that sexual assault victims' experience in court has changed very little, if at all. It is still a very harrowing experience: "The law has changed, but the people implementing it have not." If there has been a change, it may be less because of the amendments than because of such factors as the education and sensitization of police, support groups such as SAC, and public education, which has reduced the stigma.

It was felt during the court monitoring that the nature of the complainant's experience on the witness stand may have improved somewhat since the sexual assault law was passed because defence attorneys asked no questions about the complainant's past sexual history. Possibly, however, this line of questioning was not tried because of the youth of most complainants. A judge did make disparaging remarks about the character of one complainant and the culpability of another. It is clear from the monitored cases that although trials are basically being conducted in accordance with the amendments of Bill C-127, there has been no impact on the outcome of prosecuted cases in Lethbridge. There were no convictions in the six trials monitored.

One of the victims interviewed during the study recommended that victims should be given a "chance of not being perfect in their testimony" because if "just one small piece is forgotten" the accused "walks free." Discrepancies commonly were found between testimony in the preliminary transcript and in the evidence produced at trial. The victim added that delays by the defence should be avoided.

There is no conclusive evidence from the interviews with victims that Bill C-127 has had any effect on the handling of sexual assault offences. Only one respondent said she knew about the law reform but it had not influenced her decision to report the offence to police. Four victims felt they had been treated extremely unfairly by the criminal justice system. The one victim pleased with the treatment she received was not satisfied with the police investigation and, as previously mentioned, two victims were asked to take polygraphs.

A weapon was involved in the one case for which there was a conviction and the victim sustained injuries. The offender was sentenced to two years incarceration. In three other cases the offenders were acquitted and in one case there was no arrest. Three of the five victims said that regardless of the outcome, they would still recommend that victims report sexual offences to the police.

6.3 Court Monitoring

One of the objects of evaluating C-127 is to determine whether the nature of court proceedings has changed since the offence of sexual assault replaced rape. Two factors are of particular interest. The first is the nature of the victim's experience. This is because part of the impetus for change victims' unwillingness to become involved in the criminal justice system because they were the ones placed on trial. The second is the type of cases proceeding to a hearing as it was alleged that only the strongest cases, involving victims whose characters were beyond reproach, would be prosecuted.

Directly observing the court process is an effective way of collecting data on the types of cases being processed and the way in which complainants are being treated. However, most criminal cases do not proceed. The majority are dealt with by way of stay, guilty pleas and adjournments; these do not provide information on the nature of the court process or the victim's treatment. Nevertheless, we were able to monitor the cases that did proceed at both the preliminary and trial level of Provincial Court and Court of Queen's Bench, and these data are described below. The monitoring period was from May to December 1987.

Court monitoring included:

- six complete trials, two in Provincial Court, and four at Queen's Bench;
- five Preliminary hearings; and
- five appearances for sentencing only.

Case #1

Original Charges	Final Charges	Type of Appearance	Outcome
246.1	246.1	Sentencing	6 mos. incarc. + 18 mos. probation

The sentencing hearing was held in June 1987 at Provincial Court. The defendant on several (seven or eight) occasions fondled (and once digitally penetrated) the vagina and anus of the seven-year-old daughter of his employers. The defence attorney in speaking to sentence noted that the man was 57 years old, had never had prior convictions for similar acts and was, at the time of the offence, addicted to hashish and alcohol. He further stated that there was no psychological harm to the victim.

The crown attorney accepted defence's position that there was no psychological damage to the child and the accused was not considered a problem in the community.

The judge noted that he had family support and that although he was babysitting at the time, he was actually hired as a rancher's hand (implying minimal violation of trust).

The crown attorney asked for and was granted a ban on publication.

Case #2

Original Charges	Final Charges	Type of Appearance	Outcome
246.1	246.1(x1)	Sentencing	12 mos.
(x2-1)	count)		incarc. w.
	666.1 (stayed)	666.1	treatment

The sentencing was held at Provincial Court in September 1987. The defendant had a history of molesting young girls. He had three previous convictions and his probation order forbade him to be in the company of young children. He violated this order. The offences had consisted of touching and fondling, but the court was worried that he might become more aggressive. Since his previous convictions resulted in very short prison terms, it was thought that a longer term with treatment might impress upon him that he must not repeat his offences.

In exchange for a guilty plea the crown attorney dropped the second count and stayed the charge of breach of probation. The defence stated that the accused might have suffered brain damage as a result of an accident and had an alcohol problem since his youth. There was general agreement by crown and defence attorneys and judge that the defendant required a closed setting. A treatment program in Edmonton was recommended.

Case #3

Original Charges	Final Charges	Type of Appearance	Outcome
246.1(x6)	246.1(x6)	Q.B. Trial	Not Guilty
157	157		All Counts

Trial was held in June 1987 at Court of Queen's Bench and lasted one day. The charges at trial were six counts of simple sexual assault and one count of gross indecency. These charges had not changed since originally laid. Motions made by the crown attorney for a ban on publication and exclusion of witnesses were both granted.

The complainant was female and was allegedly frequently sexually assaulted. The first assault took place when she was four years old and the assaults continued until she was 12. The complainant was 15 years old at the time of the trial and the accused was her father. At the time of the trial, the accused was divorced from the complainant's mother.

Crown counsel called three witnesses for the prosecution. These included the complainant, the complainant's mother and her brother. The complainant's testimony was sworn and lasted 50 minutes. No motions were made by the crown attorney for clearing the courtroom of spectators prior to the complainant's testimony.

During the examination, the complainant gave an account of the types of sexual activity that occurred. According to the complainant, the first incident consisted of her father performing cunnilingus on her when she was four years old. The next incident consisted of her father fondling her genitals. After this three attempts at intercourse as well as fellatio occurred. Alcohol was involved in some of the incidents.

The complainant was questioned by the crown attorney about the times and places when the incidents occurred. The crown attorney made every attempt to get the complainant to connect the incidents and properly place them. The crown attorney also asked why the complainant had not reported the incidents sooner. The complainant stated that she had not talked about the incidents until her brother was molested by someone. The crown attorney asked if the complainant had made this story up in order to help her mother get back at her father. She said she had not. She also stated that she had been afraid to talk about the incidents before this time.

Cross-examination of the complainant lasted for 23 minutes during which the accused was present. The defence attorney questioned the complainant as to how often she had discussed the incidents with her mother. The complainant stated that she had discussed them often. The defence attorney pointed out discrepancies in her testimony at the preliminary hearing and in her testimony at the trial. The complainant stated that she was somewhat confused and upset at the preliminary hearing and that she didn't remember what she had said at the time of the incidents.

The complainant's mother testified that she had witnessed an attempted intercourse by the accused. Neither the complainant nor the accused knew that she had witnessed the incident, but she later confronted the accused in front of both children. The accused told her to inform the authorities if she was sure of what she had seen. She attributed the incident to his drinking and he promised to quit. She stated that she felt no unresolved conflict around the divorce.

The complainant's mother was cross-examined by the defence attorney. Questions were related to remembering times and places and the defence lawyers also pointed out a discrepancy in her testimony at the preliminary hearing. She had said that the children were not present when she first confronted the accused about the sexual assault. She admitted to changing her story.

The complainant's 17-year-old brother testified that he had seen his father and his sister naked (together) and had told his mother. He was cross-examined about whether or not there had been any family discussion about the trailer incident. He stated that he couldn't recall. He was also asked about his eyesight. He responded that he could not see long distances without his glasses and that he had not been wearing them on "that day."

The defendant gave testimony saying that during one of the alleged incidents he had been at the hospital with his wife all night. The defence attorney listed the allegations and the accused denied them all. The accused had a criminal record involving one break and enter, one theft over $200, one theft under $200, one driving impaired, and one sexual intercourse with a female under 14. During cross-examination, the accused agreed that he had been drinking during the time of one of the alleged incidents and that his daughter had also been drinking. He claimed that she helped herself and that he told her to stop. The crown attorney emphasized the defendant's problems with alcohol. The accused stated that he had been dealing with the problem since 1986. The crown attorney also brought up his previous conviction for a sexual offence. The crown attorney suggested that the accused was so drunk he couldn't remember sexually violating the complainant. The accused denied this.

In the closing arguments, the crown attorney said that the inconsistencies in the testimony could be very important or they could be trifling. The crown attorney noted that the inconsistencies concerned when and where the incidents had taken place, not who and what. The crown attorney asked the court to consider the age of the victim when the incidents occurred and the possibility that she might have blocked some of the events out of her mind. The crown attorney also asked the court not to draw adverse inferences regarding the recency of complaint. There was no motive for creating a fabrication in order to get back at the accused. The crown attorney emphasized that several people were trying to recall events that happened over a long period of time, some time before, but that the complainant's testimony was corroborated by two witnesses.

The defence counsel's closing statements emphasized the discrepancies between the complainant's and the complainant's mother's testimony as well as discrepancies in testimony from the preliminary hearing to trial. He questioned why an older child would not have mentioned the incident involving fellatio sooner. Defence counsel stated that the crown attorney had failed to prove any of the charges.

The judge found the accused not guilty on the first count and said that the evidence was suspect (both the manner in which it was given and the evidence itself) for counts 2 to 7. The judge stated that discrepancies and inconsistencies in testimony had seriously attacked the veracity of each of the witnesses.

Case #4

Original Charges	Final Charges	Type of Appearance	Outcome
246.1(x4)	246.1 149(x2) 146(x2) 157(x1)	Preliminary	Committed to Trial on one count

The preliminary hearing was held in September, 1987, and involved a 25-year-old woman sexually abused by her uncle when she was a child. The case was initiated by the complainant after her nieces watched a television program on sexual abuse and realized they had been victims of the same man.

A motion was made by defence to quash the information on grounds of uncertainty (of dates). Nine counts were reduced to two and finally one, when a second complainant failed to appear. Motions were granted on crown attorney's requests for a ban on publication and exclusion of witnesses.

The complainant testified that when she was seven years old and until she was 12, the defendant engaged her in acts of masturbation, fellatio, cunnilingus and intercourse when she went to his farm on weekends to do housework.

Defence counsel questioned the complainant about her children who were not in her custody, an apparent attempt to discredit her. The crown attorney objected and the objection was sustained.

Direct examination took 18 minutes and cross-examination, 17 minutes. The accused was committed to trial.

The defendant appeared at Court of Queen's Bench two weeks later. A short recess was called at the beginning of the proceedings. The accused was discharged for lack of evidence.

Case #5

Original Charges	Final Charges	Type of Appearance	Outcome
246.1	246.1	Trial	Not Guilty

The trial was held at Provincial Court in September, 1987. The complainant was a nine-year-old male and his testimony was unsworn. He testified that the alleged offence occurred at the end of his paper route while he and his friend were standing in the alley behind the shop of the accused. He said the accused, a stranger, came out, joked a bit and then attempted to put his hand in the complainant's pants. The complainant said he pushed the man's hand away before he touched his genitals. Direct examination took 23 minutes and cross-examination took nine minutes.

As well as the complainant, the crown attorney called a police officer as a witness. The accused was described by the officer as very cooperative. Because the accused and his wife had some difficulty understanding English, the officer said he explained everything to them.

Defence counsel called the defendant's wife to testify on his behalf. She said the police did not tell her husband that he did not have to answer their questions.

In closing, defence counsel stated that the defendant would have felt obliged to answer even if the warning had been reasonably clear and that police should have been more careful because of the obvious language problem (defendant spoke Vietnamese).

The judge was satisfied that the officer read the necessary caution, so the technicality was met. However, the concept of voluntariness has changed from "threats and favour" to matters of "fairness." The tenor of the *Charter* is also in this direction. In this case the judge said the accused felt compelled to answer the officer's questions. Therefore, under the Evidence Act, since there was no corroboration, he dismissed the charge.

There was no motion for a ban on publication, nor exclusion of witnesses in this case.

Case #6

Original Charges	Final Charges	Type of Appearance	Outcome
246.1	246.1	Sentencing	12 mos. incarc. w treatment

The sentencing hearing was held in September, 1987, at Court of Queen's Bench.

The case involved a stepfather who had repeatedly assaulted his step-daughter over a period of two years from the time she was six years of age. Intercourse was not attempted and although the victim was not physically injured, she was warned never to tell anyone.

It was believed by the court that the defendant had a strong sense of remorse and realized the seriousness of his actions. He left the home voluntarily rather than having social services remove the child and also asked that the preliminary inquiry be waived in order to save the child the ordeal of testifying. The defendant's repentance and his wife's strong support were taken into account in sentencing and he was given one year. The family had expressed a desire for reconciliation and it was felt a longer sentence might jeopardize the family unit.

Case #7

Original Charges	Final Charges	Type of Appearance	Outcome
246.1	246.1	Q.B. Trial	Not Guilty

The trial was held in June, 1987, at Court of Queen's Bench and it lasted one day. The charge had not changed since initially laid. Two motions were made: one for a ban on publication of the complainant's name and the other for the exclusion of witnesses. Both motions were granted.

The complainant was female and alleged that she was sexually assaulted when she was 10 years old. The complainant was 11 years old at the time of the trial. The accused was a family friend and had been her temporary "foster" father at the time of the alleged assault. At the time of the trial, he was employed and was married with children of his own.

Crown counsel called three witnesses for the prosecution. These included the complainant, her mother and her sister.

The complainant's testimony was sworn and lasted 14 minutes. During direct examination the complainant testified that the defendant was a friend of the family and that she, her mother and her sister were living with him and his family at the time of the assault. In January, 1986, when he was left alone with the girls for a while, he called the complainant to the bedroom. While she was there he kissed and fondled her, warning her not to tell anyone or he would kill her. The complainant went back to the bedroom she shared with her sister and told her what he had done to her.

The complainant moved to Winnipeg to live with her father and subsequently told a social worker about the offence. Then she moved to Lethbridge to be with her mother and eventually told her mother, a social worker and police.

The cross-examination of the complainant lasted 12 minutes. Defence counsel also asked if the wife of the accused had ever helped the children to bed or if it was usually the accused. The complainant replied that it was either. Defence counsel also asked if the children were left alone with the accused often and she said sometimes. She was asked if they had engaged in play and teasing with the accused before. She said they had. She also said that she had liked the accused before but was now afraid of him, and that she had not told her mother about the incident. Defence counsel questioned the delay in reporting the incident. The complainant said she was afraid to do so.

The complainant's sister was sworn in with some reluctance on the part of the judge, as she was 10 years old and very timid. She repeated essentially the same story as her sister. However, she stated that she saw the accused kiss her sister. She had followed her sister to the defendant's bedroom and watched them through a partially open door. When she saw what happened she returned to her bed.

The witness was cross-examined by the defence counsel. The defence lawyer asked if she remembered that the girls had often teased and tickled the accused. The defence counsel then went on to ask a question using a transcript from the preliminary trial. The crown attorney objected to this and the objection was sustained. The defence counsel then restated the discrepancy between what the witness said at the preliminary hearing and what she was saying at present. The witness could not explain the discrepancy. The defence counsel then asked why the witness had not told her mother what she saw. She said it was because her mother was not there when the incident occurred and that she was afraid of the accused after witnessing the incident. She admitted the accused had always treated her well and had never behaved badly towards her. Defence counsel asked if the complainant had told her what happened. She said that she had.

The crown attorney attempted to clarify the discrepancies in the transcript but could get no clarification from the witness.

The defendant gave testimony saying he remembered the time in question and that he had all the children in his room and was playing with them. He admitted to giving them "whisker rubs" and kissing them. He said the two mothers returned home and put the children to bed. However, he further stated that he had never been left alone with the two girls who were not his own and that he treated both girls as if they were part of his family.

The crown attorney cross-examined the defendant. He stated that he was never alone with the two sisters for any length of time. He said that he would not stay alone with any number of kids because they got on his nerves. The crown attorney then asked if he had been convicted of sexual assault in Lethbridge in 1985. The accused said that he had, but that it had been in Taber, not Lethbridge.

Defence counsel called the wife of the accused as a witness. She stated that the mother of the complainant had still been living at the house the night the assault took place. She said that the occasion was the only time she left her husband with the children and that all of the children were present.

The crown attorney cross-examined and established that the witness would never leave her husband alone and yet she had "once."

The defence also called as a witness the defendant's 13-year-old daughter. She essentially restated her mother's testimony.

The crown attorney cross-examined the witness. She did admit that her mother occasionally left the children at home alone but that she had never left the complainant and her sister at home without one of the other children being there.

The crown attorney then asked to introduce another witness, the complainant's mother. The judge noted that the mother had been present throughout the trial and that crown attorney had asked for witnesses to be excluded. The crown attorney stated that he had not expected the mother to be a witness but needed her for a specific fact. The judge agreed to this and allowed the complainant's mother to be sworn in.

The crown attorney asked the complainant's mother how long she had stayed in the defendant's house with the children. She stated that she had only been there for a maximum of four nights.

The defence counsel cross-examined and attempted to make her admit that she had stayed longer and was there on the night of the alleged incident. He was unsuccessful.

In the closing arguments, the crown attorney said that the defence's case was based primarily on lack of opportunity, but the testimony of the defendant's daughter showed that opportunity did exist. He also added that he thought that it was strange that the defence witnesses could remember so clearly that no opportunities existed. The crown attorney began to discuss the discrepancies in the transcript but the judge instructed him that this was not a problem. The crown attorney also stated that the crown witnesses were not overly dramatic and that they would have no reason for fabrication. He also felt that it was important that the complainant had waited until she was in Winnipeg to reveal her story. This was consistent with the threat she had received from the defendant. He also reminded the judge that reasons of recent complaint no longer apply.

In closing, defence counsel stated that his case rested on the credibility of his witnesses. It was essentially one family's word against the other's.

The judge found the accused not guilty. He stated that he found the crown attorney's witnesses to be credible but that there was conflicting evidence. The complainant and her sister claimed the incident took place when they were alone with the accused and the defence witnesses insisted that the complainant and her sister were never left alone with the accused. This contradiction left a reasonable doubt in the mind of the judge and it was therefore decided in favour of the accused.

Case #8

Original Charges	Final Charges	Type of Appearance	Outcome
246.1(x2) 246.2	246.1(x2) 246.2	Q.B. Trial	Not Guilty All Counts

The trial was held in September, 1987, at Court of Queen's Bench and lasted two days. The charges at trial were two counts of simple sexual assault and one count of sexual assault with weapons/threats/bodily harm. These charges had not changed since originally laid. Two motions were made: one for a ban on publication and one for an exclusion of witnesses. Both were granted.

There were two complainants, a sister and brother who, at the time of the trial, were 12 and nine respectively. The accused was their mother's common-law husband. Crown counsel called four witnesses including both complainants, the father of the victims and a psychologist.

The father of the victims testified that his wife had left him and taken the children when she went to live with the accused. He said he did not see the children very often. In August, 1986, the male complainant ran away and his father was informed. The boy made the current allegations and both children were apprehended by the Alberta Social Services.

During cross-examination the father was asked why he didn't see the children more often. He stated that it was hard to get in touch with them and that his wife had denied him access. He was also asked about use of pornography in his house.

The male complainant was sworn, in spite of objections by defence counsel. He testified for 40 minutes. He stated that his mother had almost killed him and his sister by beating them while she was drunk and the accused had stopped her by taking away the instrument she had been beating them with. He also stated that the accused had fellated him while his mother watched and had forced his mother to do the same. The complainant also said that he had been forced to fellate the accused while his mother watched and that he also had to do this to his mother. He said that his sister had not been present when this happened and that he had not told anyone because he was afraid of the accused. He was asked if he had ever seen anything done to the female complainant and he replied that he had seen the accused and his mother tickle his sister until she urinated. He also said that he had forgotten many incidents. He added that he had been beaten by the accused as punishment for lying to them.

The complainant was cross-examined for 13 minutes. He was asked if he had once liked the accused. He said he had but he didn't now because he had been mean to him. The complainant was asked about incidents of lying and stealing and if he had ever talked to the police about these incidents of lying, etc. He said that he didn't remember. The complainant was asked if anyone had told him not to say anything about the alleged sexual assault. He said no. He also said that he had not told anyone. The complainant was asked if he had ever asked the accused to stop molesting him. He said that he hadn't. He also said that he had shown his sister blood on his penis. The defence counsel asked if this was because he didn't clean himself properly. He said it was. The defence counsel showed the complainant a Father's Day card he had given to the accused and asked if he had ever called him Dad. He said he had not.

The second complainant was sworn in and she testified for 23 minutes. She alleged that the accused would get drunk in the evenings, ask her to stand beside him and would fondle her genitals. She said that her mother was in the room when it happened. Asked if she had seen anything being done to her brother, she replied that she had not, but she recalled seeing a scratch on his penis. She had not told the accused to stop and she did not discuss the abuse with anyone. She said he told her he would kick them out or hit them if she told anyone. When asked if she had been punished or seen her brother being punished she said she no, but she had heard her brother crying twice. She also said that her mother had been drunk.

During cross-examination for seven minutes, the defence counsel had her reiterate that she had not seen the accused do anything to the other complainant. The defence counsel then questioned her on discrepancies between her testimony at the preliminary hearing and at the trial. There was a question as to what type of clothing she was wearing at the time of the alleged assaults and where she was when her brother showed her the scratch on his penis. During cross-examination she admitted that they were punished by getting a spanking or being paddled. She also remembered that her brother had been in trouble for stealing and that the police had come to the house. She was asked if her brother had been in trouble when he ran away and if she had ever seen any pornography while she was at her father's house. She answered no to both questions.

The crown attorney asked for the application for evidence of a psychologist. The doctor was an expert on child sexual abuse and had examined both of the complainants. The defence counsel asked for an adjournment due to lack of preparation for the above-mentioned witness. The adjournment was granted and court reconvened later in the month.

The psychologist testified he had seen the male complainant in order to assess his current psychological standing. He only saw him once and said his behaviour was consistent with that of a sexually abused child. He also interviewed the female complainant. He said that she had denied any allegations of sexual abuse but that this was common behaviour for sexually abused children.

During cross-examination, the witness was asked if he had interviewed the ex-wife or children of the accused. He said he had not. There were many questions around the possibility of the male complainant seeing this type of activity on television or overhearing it and attributing it to himself. The witness said that this was possible. Also asked if the child's behaviour patterns could be attributed to those of a hyperkinetic child, the witness said they could be.

The defendant testified that the female complainant was his pet. His testimony referred mainly to the male complainant. He stated that the boy had lied, stolen and exhibited many behavioural problems. He also said that he had warned him to stay away from a known sex offender who lived in their area and that is where he learned of the sexual acts he accused the defendant of.

During cross-examination the defendant painted a picture of a very nice home life. He said that he paid a lot of attention to the children and there was no abuse at all. He denied that either he or the children's mother were anything more than social drinkers. He said that the boy was a discipline problem but the girl was no trouble at all. He also said their mother never physically abused them. Questioned about the injury to the boy's penis, he said there had been a problem since the boy was circumcised and was due to poor hygiene. When asked about pornography, he said there were some adult magazines in the house and some polaroids of the couple. He also said alcohol had not been a problem in any of his relationships.

The complainants' mother testified that she had not witnessed any sexual acts between her children and the accused. She stated that his relationship with both children was excellent. However she had been having problems with the boy, especially regarding his lying and stealing. She also corroborated the defendant's testimony regarding his warning to the boy about the sex offender. She denied any alcohol problems, saying she only drank occasionally. She said she had never physically abused the children. She agreed with the testimony of the accused that there was a very good home life for both children.

In his closing comments the crown attorney stated that these events did occur. He said that minor discrepancies in testimony are natural and that the children's behaviour was consistent with that of children who have been sexually abused. He also asked why a child would run away from a wonderful home.

Defence counsel stated that the events did not occur. He said the boy had been known to lie and steal, had behavioral problems and therefore was not a reliable witness. He went on to say that the girl denied any allegations for over two months and then said she had been fondled. Defence counsel stated that the accused had no previous convictions, had another daughter living with him and had his other children visiting on weekends. He referred to the psychological report as having stated that the boy was hyperactive, noting his behaviour could be attributed to that.

The judge found the accused not guilty because he was left with reasonable doubt and felt it was unsafe to convict on the evidence.

Case #9

Original Charges	Final Charges	Type of Appearance	Outcome
246.1(stayed) 169	169	Sentencing	12 mos. probation w. treatment

A guilty plea was entered in May, 1987, and sentencing took place in September, 1987. The defendant was a mentally retarded adult with a history of exposing himself in public.

The defence counsel entered a plea of guilty to the remaining charge and noted that the defendant had been married for a year, had a good record of employment and although his prior record might indicate that incarceration was appropriate, he argued that his client would likely be victimized in prison or be kept segregated for his own safety. Defence counsel talked about a treatment program in Edmonton and felt the accused would be a good candidate.

The judge, crown attorney and defence counsel discussed the proposal and there was general agreement that the accused must be forced into a treatment program. The crown attorney expressed concern that the incidents were becoming more aggressive. Although the accused had a history of masturbating in public places, this time he used some force by grabbing the complainant's arm. Although she was uninjured, it was noted that the experience was still traumatic to the victim.

There was obvious concern shown for the offender, but it was made clear that failure to receive treatment would result in a jail sentence.

Case #10

Original Charges	Final Charges	Type of Appearance	Outcome
246.1	246.1	Preliminary	Committed to Trial

A preliminary hearing was held in July, 1987. The complainant was a 17-year-old who alleged that she was sexually assaulted by her stepbrother. Motions were made by the crown attorney and defence counsel for a ban on publication of names. The crown attorney made a further motion to exclude witnesses and defence counsel asked for the exclusion of the victim's mother from the courtroom, suggesting that she might coach the victim on the witness stand.

Only the complainant was called by the crown attorney. She testified that her parents were away at the time of the offence and she was staying with a friend. Her stepbrother was at the house when she went home for a change of clothing. He had been smoking marijuana. He asked her to massage him. She agreed to massage his back if he would let her go. After about two minutes he rolled over and forced her to have intercourse. She did not tell anyone because she was embarrassed. She became pregnant as a result of the assault.

The defence counsel called the story a lie and insisted the pregnancy resulted from sex between the complainant and her boyfriend. The defence counsel cross-examined her on the delay in reporting. He asked if she consented to the act, mentioned her lack of injuries and asked questions to cast doubt on her character. For example, the defence counsel asked, "Did you tell your parents you would be away for the weekend?" The complainant said, "No." The defence counsel asked her if she had spent the weekend with her boyfriend before and she said she had.

There were no closing arguments and a trial date was set.

Case #11

Original Charges	Final Charges	Type of Appearance	Outcome
246.1(x2)	246.1(x2)	Preliminary	Committed to Trial

A preliminary hearing was held in July, 1987, involving two complainants, a 10- and an 11-year-old who alleged they were sexually abused by their mother's former common-law husband. The crown attorney requested a ban on publication of information that would identify the victims and the defence counsel made a motion for a total ban on publication of the preliminary inquiry. The crown attorney also asked for the exclusion of witnesses. All were granted.

The crown attorney called on the two complainants and their mother to testify. The mother gave information about the correct birth dates of her daughters -- dates when the accused lived with them -- and identified the accused. The two children gave sworn testimony. Both alleged that the accused had fondled them on several occasions and one time had forced one of the girls to touch his penis and had "rolled" on the other.

Direct examination took 16 minutes for the 11-year-old (plus six minutes to assess her ability to be sworn), and she was cross-examined for 22 minutes. The 10-year-old complainant spent six minutes on direct examination after 10 minutes to establish her competence to take an oath. She was cross-examined for 23 minutes. Cross-examination of both complainants was mainly on dates and sequence of events. The defence counsel brought up the issue of specificity of events, stating that dates were vague. The judge cited case law to demonstrate that it was not necessary for the crown attorney to specify.

The accused was committed to stand trial.

Case #12

Original Charges	Final Charges	Type of Appearance	Outcome
246.1(x2)	246.1(x2)	Preliminary	Committed to Trial

This preliminary hearing was held in October, 1987, and involved two female complainants. The first complainant was a 37-year-old woman with multiple sclerosis who alleged that she was sexually assaulted in May, 1987, by the male driver of the Handibus transportation service. The second complainant was a 30-year-old female with Down's Syndrome who alleged she was assaulted in June, 1987, by the same man.

Crown counsel called three witnesses for the prosecution: the two complainants and the manager of the Handibus service.

Direct examination lasted 38 minutes for the first complainant who explained that because she was in a wheelchair, she used the Handibus to get around. She testified that while the driver was buckling her seat belt, he attempted to hug and fondle her, then exposed her breasts and tried to kiss her. She said he did not speak to her about the incident and she told someone about it the next day. Asked if she knew of a similar case, she replied that she only knew what she had seen in the newspaper.

She was cross-examined for three minutes and was asked if she had seen this driver before and if so, how many times. She said she had and that it was at least 10 times. She said there had been no further problems, but on further questioning stated that he had tried to kiss her again.

Direct examination took 35 minutes for the second complainant. She related that she always took the Handibus to work. On this occasion the driver stopped the bus and told her to fellate him. He fondled her breasts and genitals, digitally penetrated her, and attempted to have her masturbate him. She said she was too afraid to say anything to him. She did not tell anyone at work, but finally told her mother. She said that she had ridden with this driver before, but nothing like this had ever happened. He did not warn her not to tell anyone what happened. Asked if she knew about any other case like this one, she said she did not.

Cross-examination lasted six minutes. She was asked if she could relate actual times. She could not, but she did recall being late for work.

Direct examination of the manager of the bus service centered on identification of the accused and confirmation that he was the driver who had picked up the complainants on the days in question. He was also asked to describe the procedure involved in securing seat belts for passengers.

The judge was satisfied that there was sufficient evidence and committed the case to trial.

Case #13

Original Charges	Final Charges	Type of Appearance	Outcome
246.1	246.1	P.C. Trial	Not Guilty

The trial took place in Provincial Court in September 1987. A motion was made by the crown attorney for a ban on publication and for the exclusion of witnesses. Both motions were granted. The defence counsel made a motion for nonsuit, following the crown evidence. This motion was not granted; the judge stated the crown attorney had made a prima facie case. The complainant was an 18-year-old female. The defendant was her step-grandfather and employer.

The crown attorney called three witnesses. These included the complainant, her mother and her father.

Direct examination of the complainant lasted 20 minutes. She gave an account of what happened and stated that she had a good relationship with the defendant. She also stated that it was her mother who persuaded her to pursue the matter after she had disclosed the incident to her. The offence consisted of a hug and a kiss on the breast. The complainant did return to work after the incident, but quit soon after a confrontation between her parents, both step-grandparents and the complainant. She stated she felt uncomfortable about the incident.

The cross-examination of the complainant lasted 15 minutes. She was asked about the delay in reporting and about the facts and her interpretation of the facts. She was asked if it was possible that because she was upset about not receiving an expected engagement ring, the defendant just wanted to console her and she had misinterpreted his intentions. It was established that the relationship of the two was good, and that hugs and kisses between them were not uncommon. Consistency of her statements was not challenged since there was no preliminary hearing. The defence counsel did attempt to discredit the witness by asserting that the victim was being used by her mother as part of an ongoing feud between her mother and the accused. The complainant agreed that it was her parents who wanted to pursue the case. There was some discrepancy about whether the complainant was aware of the antagonism between the two parties.

Both parents testified for the crown attorney and were basically asked to describe the disclosure and confrontation. Several minor objections were made by the defence because the crown attorney repeatedly went over these matters with all witnesses. Since the defence counsel had not made an issue of them, the objections were basically pleas to speed up things. They were ignored by the judge.

The defence called witnesses and the defendant did testify. He denied the offence, admitting to kissing her but saying that the kissing was not on the breast. He described his relationship with the complainant as good and also stated that when the complainant returned to work, there would be no ill feelings between them. The defendant stated that the complainant was easily led by her parents.

The wife of the accused testified that her husband denied the act of kissing the complainant on the breast but did not deny kissing her.

The verdict was not guilty. The judge stated that he had reviewed the family relationship and did not believe there was a sexual aspect to the kiss.

Case #14

Original Charges	Final Charges	Type of Appearance	Outcome
246.1 146	246.1 146	Preliminary	Committed to Trial

A preliminary hearing was held in November, 1987. The case involved a 13-year-old female who alleged that she was assaulted by a family friend. Motions were made by the defence counsel and the crown attorney for a ban on publication and the crown attorney asked for exclusion of witnesses from the courtroom. Motions were granted.

Crown counsel called on six witnesses as well as the complainant. These included four police officers (one forensic), one physician and the victim's mother. Evidence was produced to corroborate the complainant's story.

The complainant's testimony was sworn and lasted 20 minutes. According to the complainant the accused was her friend's father and her neighbour. She had known him for about two years, trusted him, and went to his place often. She testified that the occasion on which the incident took place, he had offered her wine which she refused. Then he showed her several pictures of naked women. He told her he would not allow her to go home until they "made love." He fondled her in spite of her objections and she said she felt something hard inside her. He told her not to tell and he would give her twenty dollars every time she came back to "fool around". She ran home, wrote everything down and gave the note to her mother.

Cross-examination of the complainant lasted 20 minutes. The defence tried to discredit her by implying that she had not really objected to the alleged assault and might actually have enjoyed it. He noted that she had no injuries on her wrists from the defendant's forcing her to stay. He also raised the possibility that the victim's older brother might have committed the act.

There was a Voir Dire regarding the admissibility of a statement taken by the police in which the accused said, "I really don't know why I did it." The statement was admitted.

The accused was committed to stand trial.

Case #15

Original Charges	Final Charges	Type of Appearance	Outcome
246.1(x2) 156(x2) 157(x2)	246.1 156(x2)	Sentencing	One year incarc. + 3 years probation

A guilty plea was entered at Provincial Court in October, 1987. The case involved a university professor who had sexually molested a number of youths. His modus operandi was to appeal to the curiosity of boys, particularly those who had some trouble with school, their parents or the law. After befriending them, he would involve them in various sexual acts. The police and social services had been aware of his activities for several years but had not been able to get a disclosure.

Eventual disclosures resulted in the accused pleading guilty in exchange for a reduction in the number of counts and control over the date of the sentencing so that he could retire from the university.

The judge commented on the defendant's violation of trust as he was the legal guardian of one victim. On the other hand, the judge acknowledged that the defendant he had made contributions to the community as an educator and scientist. Also, he had a record of having been in a Japanese prisoner-of-war camp and it was implied that his quirks might ave originated there. At first the judge sentenced him to one year plus six months probation. At the suggestion of the crown attorney, probation was extended to three years with a prohibition of "association with individuals under 16 unless they are direct relatives or friends approved by his probation officer."

Case #16

Original Charges	Final Charges	Type of Appearance	Outcome
246.1	246.1	Q.B. Trial	Not Guilty

The Queen's Bench trial was held in June, 1987, and lasted one day. The complainant was an 11-year-old female. The accused was a 37-year-old friend of the complainant and her mother.

Motions were made by the crown attorney for a ban on the publication of any information pertaining to the complainants identification of the complainant and for the exclusion of witnesses. Both were granted.

Crown counsel called three witnesses. These included the complainant, the mother of the complainant and a physician who examined the complainant after the alleged offence was disclosed.

The complainant's testimony was sworn after the judge was convinced that the complainant understood the meaning of "truth" and the consequences of lying. The defence was offered the opportunity to question the complainant on this issue, but declined. The complainant was questioned for 20 minutes on direct examination and cross-examined for 30 minutes.

During direct examination, the complainant gave an account of her relationship to the accused and the events that happened that day. The complainant stated that the alleged assault happened while moving the accused's and family's belongings from the complainant's home back to his own. The alleged assault was said to occur on the second trip while the complainant and defendant were alone. The defendant was said to have proposed a game of "dead man" in which he took off her clothes and assaulted her, warning her not to tell anyone. According to the complainant sexual intercourse did take place. She stated that she did not tell anyone because she was too scared.

The delay in reporting was brought out in direct evidence by the crown attorney, who also asked questions about consent, but the complainant was not cross-examined about either of these points. The complainant was medically examined more than one-and-a-half months after disclosure of the alleged assault. The examiner testified that the hymen was disrupted, but could not state whether or not it could occur from physical activity or the use of tampons.

In the testimony of the complainant's mother, the mother verified the facts of the complainant's story.

The complainant was not questioned about past sexual activity, but was asked about a "love letter" written by the complainant to a 16-year-old boy. No one commented on the admissibility of this testimony.

The defence counsel did not attempt to cross-examine the complainant about her reputation. However, the complainant was questioned about her relationship with her mother. There were also questions attempting to clarify the details of each trip. The purpose of this was seen later in the trial, when the accused and his wife both stated that only one trip with the complainant took place. Additional questions were asked about an argument prior to the disclosure, when the defence counsel tried to establish an "anger" motive for lying. The consistency of the victim's testimony was challenged using excerpts from the preliminary transcripts. The defence counsel also tried to discredit the complainant on the basis of inconsistencies in her attitude toward the accused after the assault and disclosure. Two months after the disclosure the complainant saw the defendant in a store, ran up to him and greeted him in an friendly manner.

In the defendant's testimony, he stated that two trips did take place to his home, but the second trip was made by only himself and his wife. The defendant denied that the sexual assault took place, but also brought out the possibility of a blackout due to withdrawal from a prescription drug and stated that he'd had prior blackouts. The defendant also spoke about the obsession the complainant's mother had with sexual assault, stating that she often spoke about how some of her boyfriends had raped her. He also noted an incident that took place just prior to the disclosure of the sexual assault, in which he had gotten very angry with the complainant and scolded her very harshly. The defendant was not questioned regarding his criminal record, but was questioned about his use of alcohol/drugs.

Other testimony included the physician of the defendant who testified to the possibility of a blackout due to withdrawal from a prescription drug.

The wife of the defendant also testified to back up the statement that only one trip with the victim took place.

In closing arguments the crown attorney argued that if the mother and daughter were fabricating the story, why would they invent a second trip? The crown attorney also said that when the accused was first charged he said to his wife, "I don't think I could have done it" emphasizing the uncertainty and the possibility of a blackout.

The defence pointed out motives for fabrication:

- the victim was in conflict with her mother and was using assault as a way to get sympathy (in light of her obsession with sexual assault);
- it was a method of getting even with accused for speaking sharply to her;
- the victim had previous sexual assaults and knew process; and
- the victim had been inconsistently friendly in the store.

Case law was cited in which testimony of a child must be taken with caution.

The verdict was not guilty. The judge stated that after reflecting on all the evidence he was "not satisfied beyond a reasonable doubt that the second trip took place."

6.3.1 Analysis by Theme

Witnesses

- Police served as witnesses in two of 11 trials (including preliminary hearings).
- Forensic evidence was presented in one of 11 trials.

- Medical evidence was presented in two of 11 trials.
- The victim(s) testified in eleven of 11 trials.
- Social workers testified in zero of 11 trials.
- Sexual assault workers testified in zero of 11 trials.
- The mother of the victim(s) testified for the crown attorney in six of 11 trials. (In one trial (case #8) the mother testified for the defence.)
- A psychological expert testified in one of 11 trials.

Defendant's Statements to Police

In two of 11 trials, the defendant made a statement to police which the crown attorney sought to introduce as evidence. It was admitted in only one of these.

Cross-Examination of Victim on Reputation and Character

Bill C-127 severely restricted the defence counsel's ability to cross-examine the complainant about her (or his) sexual reputation or character. However, a typical sexual assault involves only two people, the complainant and the accused. At trial the usual defence strategy was to deny that the event took place and then attack the credibility of the victim. This certainly is an attack on the victim's general reputation and character. In none of the trials monitored did the defence counsel attempt to cross-examine the complainant about her or his sexual reputation or character, but in at least four of the trials there were attempts to discredit the victim by, for example (in case #8 or case #16), mentioning difficulties with parents because the child habitually told lies. In case #10, a preliminary hearing, there was an attempt to blame the pregnancy that resulted from the assault on someone else. In case #4, also a preliminary hearing, the defence attempted to question the complainant about her children who were not in her custody and in this way cast doubts about her character.

Recent Complaint

Victims were cross-examined about a delay in reporting in three preliminary hearings, one Provincial Court trial and three court of Queen's Bench trials.

Challenges from Preliminary Transcripts

In each of the four Queen's Bench trials, where preliminary hearings had been held, the victim's testimony was challenged using excerpts from the transcript of the preliminary hearing.

Time Spent on the Witness Stand

In 11 trials, involving 14 complainants, the complainant was on the stand for an average of 24.9 minutes in direct examination; and 16.6 minutes in cross-examination. The range of time spent on the stand by the defendant was from 26 minutes to 73 minutes.

Accompaniment of Complainant

All but three cases involved child complainants and in most cases complainants were accompanied to court by their mothers. If the mother was also a witness, the child would be unaccompanied when the mother had to leave the room. In a few cases social workers were present.

Description of the Offence

The sexual assaults did not involve physical violence. All were classified as s. 246.1. One case included a charge of s. 246.2. Many also included other charges; 157 was the most common.

Nature of the Prosecution

The prosecution's cases rested on the ability of the complainant to give clear, coherent, and consistent accounts of the events. Particularly in cases where the incident had occurred some years previous to the trial and in trials where preliminary transcripts were available, the defence found inconsistencies in the complainant's testimony. Given problems of memory and the courtroom tension, complainants, particularly child complainants, had difficulty providing "faultless" testimony. With these factors, along with the absence of corroborative evidence, the crown attorney was unable to prove guilt beyond a reasonable doubt.

Nature of Defence

The defence position was complete denial that the incident ever happened. Since there were usually no eyewitnesses to the assault, it became a matter of the complainant's word against that of the accused.

Verdict

In the case of trials, two out of two Provincial Court cases ended in verdicts of Not Guilty. Four out of four Queen's Bench trials ended in verdicts of Not Guilty.

6.4 Interviews With Victims

This section is based on five completed interviews with sexual assault victims who had had some experience with the criminal justice system since the implementation of Bill C-127.

6.4.1 First Case

Case Description

A 25-year-old female was assaulted in her home by a stranger. Her assailant was male and had a criminal record. Sexual contact included: sexual fondling, oral sex, genital intercourse, anal intercourse and masturbation. A weapon was involved in the assault and the victim was injured. At trial the accused was found not guilty.

Victim's Evaluation of the Criminal Justice System

The victim was asked to rate how she was treated by the criminal justice system. On a five-point scale (where one point is "extremely unfairly", three points are neither and five "extremely fairly"), the victim said she was treated "extremely unfairly."

Services

At the time of the victim's assault, Lethbridge did not have either victim services or a sexual assault centre. The victim talked to a counsellor at Family Services and joined a group program for sexual assault victims. She was satisfied with the services provided by the agency.

The Hospital

The victim attended the hospital three hours after the assault. She said that the staff was "understanding" and "comforting." She was attended by a male doctor and a sexual assault kit was used.

The Police

The victim called the police before any other agency. They were contacted approximately two hours after the assault and one hour after the victim's first disclosure of the assault to a friend. The victim said that her friend supported her decision to call the police.

The Interview

The victim was interviewed four times by four male police officers and she was happy with the way she was treated.

Investigation

The victim was satisfied with the manner in which her report was investigated by the police. The accused was arrested three hours after the report to police and charged with sexual assault with threats/bodily harm. The victim was satisfied with the charges.

Court Proceedings

The victim appeared in court twice. She was not satisfied with her preparation for trial by the crown attorney. She was questioned at trial for two hours by the crown attorney and one-and-a-half hours by the defence counsel. She described the experience of testifying as "extremely upsetting," saying that "it was degrading." The defence counsel asked questions regarding her sexual history and she was very critical of the judge.

The accused was found not guilty. The victim was very upset with the verdict. She later sent a letter to the judge stating her views on his decision.

Suggestions and Recommendations

The victim said that she would still recommend reporting to the police. She was aware of the new sexual assault legislation but said that it did not affect her decision to report and follow through with the case.

6.4.2 Second Case

Case Description

A 28-year-old female was assaulted by an acquaintance in his home. Sexual contact included oral sex and masturbation. A weapon was involved and the victim was injured. The accused was convicted and sentenced to two years in prison.

Victim's Evaluation of the Criminal Justice System

The victim felt that she had been treated "extremely unfairly" by the criminal justice system.

Services

The Sexual Assault Centre was open during the period of this victim's assault and was the first agency she contacted. She talked to a counsellor from the centre and joined a group for sexual assault victims. She was satisfied with the services provided.

The Hospital

The victim attended the hospital two days after the assault. She said that the delay in attending was due to the fact that she was "in shock." She was examined by a male doctor who treated her "okay." She did not think that a sexual assault kit was used.

The Police

The police were the second agency called by the victim. They were contacted two days after the assault. The victim said that she delayed reporting because she felt ashamed and blamed herself. She called police because her husband and the Sexual Assault Centre suggested that she report it.

Interview

The victim was interviewed four times by one male and one female officer. She was not happy with the female officer, saying that she laughed at her and asked: "how can a big woman like you let a guy drag you from your place to his place and how can you say he did that?" The victim also was asked to take a polygraph test and threatened with a public mischief charge.

Investigation

The victim was not satisfied with the police investigation saying: "I don't even know if they investigated, to be totally honest." The accused was arrested but the victim did not know when the arrest took place. He was charged with sexual assault with a weapon. The victim was not satisfied with the charges. She thought he also should have been charged with harassment.

Court Proceedings

The victim appeared in court twice. She was happy with the way in which the crown attorney prepared her for trial. She was questioned at trial for half-an-hour by the crown attorney and 45 minutes by the defence counsel. She described the experience of testifying in court as "extremely upsetting" and felt the defence counsel was blaming her for the assault.

The accused was found guilty and sentenced to two years in jail. The victim thought the sentence should have been more severe.

Suggestions and Recommendations

The victim said that she would recommend reporting to the police and that victims should be encouraged to go for counselling.

6.4.3 Third Case

Case Description

An 18-year-old female was assaulted by a friend of her uncle in his home. The accused had a prior record for sexual assault. Sexual contact included genital intercourse. The accused was found not guilty.

Victim's Evaluation of the Criminal Justice System

The victim felt that she was treated "extremely fairly" by the criminal justice system.

Services

The victim did not have contact with any of the available social services.

The Hospital

The victim did not attend a hospital or other medical facility.

The Police

The police were the first agency called by the victim. They were contacted one or two days after the assault. The victim delayed reporting to the police because she was feeling confused, especially since the offender was her uncle's friend. She decided to phone the police because she "knew what had happened was wrong" and was told that her uncle would phone the police if she didn't.

Interview

The victim was interviewed twice by one male officer. She said that the officer was nervous and offered to have a female interview her. He was supportive and believed her because he knew that the accused had a prior involvement with the law.

Investigation

The victim was satisfied with the manner in which her report was investigated by the police. She said that the case was in court fairly soon after the assault. The accused was arrested approximately two weeks after the report to police and charged with sexual assault. The victim was satisfied with the charge.

Court Proceedings

The victim appeared in court a total of three times. She was satisfied with her preparation by the crown attorney, saying that he told her what to expect. She was examined for 25 minutes by the crown attorney and 45 minutes by the defence counsel. She felt intimidated by the latter, feeling that he tried to trick her into appearing as though she were lying.

The accused was found not guilty. The victim was very unhappy with the verdict.

Suggestions and Recommendations

The victim said she would recommend reporting to the police because it is the "only chance that they will be punished." She thought it was unfair that the offender was allowed to listen to everybody's testimony before he testified: "then he gets up and weaves his own story and the victim has no chance for rebuttal." She also felt that victims should be given a "chance of not being perfect in their testimony" because if "just one small piece is forgotten" the accused "walks free." The victim added that the prosecution needs more time to appeal and delays by the defence should be avoided.

6.4.4 Fourth Case

Case Description

A 30-year-old female was assaulted in her truck by a stranger (male). Sexual contact included genital intercourse. A weapon was involved and the victim suffered injuries. No arrest was made in the case.

Victim's Evaluation of the Criminal Justice System

The victim felt that she had been treated "extremely unfairly" by the criminal justice system.

Services

The victim talked to a counsellor in the sexual assault program at Family Services. She was very pleased with the services provided. Family Services was the first agency contacted by the victim. She also sought additional counselling from a medical doctor.

The Hospital

The victim attended the hospital five days after the assault. She went to the hospital at the insistence of the police. She said that a sexual assault kit was used, but was likely mistaken because of the amount of time lapsed since the assault had occurred. She felt she was treated "very coldly" by the doctors (one male and one female): "like a piece of meat."

The Police

The police were the second agency contacted by the victim. She called them two days after the assault. She was reluctant to report the assault because she had been through this experience before and had "no faith in the justice system or the police." She said that she decided to call the police "for the protection of someone else," i.e., a future victim.

Interview

The victim was interviewed by one male officer. She was unhappy with his attitude: "very unfeeling, inconsiderate and thoughtless." The officer attempted to interview her more than once but the victim refused. She was also asked to take a polygraph test and refused.

Investigation

The victim did not feel that the police bothered to investigate her case. The accused was not arrested.

Suggestions and Recommendations

The victim said that she would not recommend that women report sexual assaults to the police: "Absolutely not. I would encourage them not to go to the police but to seek help and counselling for themselves." She suggested that victims should always be questioned by someone of the same gender and that police needed training in understanding and supporting sexual assault victims.

6.4.5 Fifth Case

(This case involved the Calgary Criminal Justice System.)

Case Description

The female victim was assaulted by her father on several occasions when she was 16 years old. The offences took place at their residence and involved sexual fondling, oral sex, attempted genital intercourse, digital penetration, masturbation and "french kissing." The accused had a criminal record, but the victim did not know what offences were involved. The accused was tried and found not guilty.

Victim's Evaluation of the Criminal Justice System

The victim felt that she had been treated "extremely unfairly" by the criminal justice system.

Services

The victim initially talked to her school guidance counsellor but did not disclose the sexual assaults. Four years after the last assault, the victim's doctor contacted Alberta Mental Health in Lethbridge. The victim became involved with group therapy for sexual assault victims at the Family Services agency in Lethbridge. She was satisfied with the services provided but also would have liked personal counselling.

The Hospital

The victim did not seek medical assistance after the assaults.

The Police

The police were contacted four years after the last assault. The victim had delayed getting help and reporting because she was afraid of her stepmother and the consequences of reporting. She also realized that she had no physical evidence. She finally decided to contact police because she wanted advice on whether to charge or not.

Interview

The victim was interviewed three times by one male officer. She found him to be "very kind and compassionate."

Investigation

The victim said she really did not know enough about the investigation to comment on it. She had been experiencing threats from her family during this time. Her father was arrested two weeks after her report to police and charged with gross indecency and incest. She was satisfied with the charges.

Court Proceedings

The victim appeared in court a total of three times. She was happy with the way in which the crown attorney prepared her for court. The crown attorney told her that she was up against the "strictest of all judges." The victim was questioned for 20 minutes by the crown attorney and half an hour by the defence council. She described the experience of testifying in court as extremely upsetting saying that she "didn't want to be discussing this thing in public." She said that the defence attorney wanted to make it look as if she were promiscuous and emotionally unstable and had a personal vendetta against her family.

The accused was found not guilty. The victim was very upset with the decision: "I felt that I was on trial that day, not him (the accused). His word was never even questioned on the stand. My name was dragged through the mud. The judge twisted everything I said."

Recommendations and Suggestions

The victim said she "would recommend to any victim to go to someone she can trust but not necessarily the police." She said that the victim must have someone in court who supports her because the criminal justice system "is somewhat chauvinistic -- on the man's side. There is not much justice in the justice system."

6.5 Other Influences on the Processing of Sexual Assault Cases

Crown attorneys all noted a number of influences on the processing of sexual assault cases which were not related to Bill C-127. The public now views sexual assault as the greatest invasion of privacy. There is pressure to treat sexual assault victims seriously. It was felt that society has become more aware of the victim's needs. It is now policy that the prosecutor who starts the case carries it through to completion and interviews the victim early in the process. This contrasts with some other offences and other types of cases in which the prosecutor sometimes doesn't see the complainant until they enter the courtroom.

Finally, support groups like rape crisis centres have increased awareness but are a "mixed blessing." They have provided real support for victims, but there is a feeling by prosecutors that some victims are encouraged to proceed when it is not in the victim's interest to do so. "Sometimes they pursue things too far, e.g., in coming into court; this can destroy a case if there's a hint of coaching. For example, [defence asks] 'Did you talk to anyone about this?' 'Yes, my counsellor who's right over there.'" Still, the crown attorneys generally agreed that there is a feeling the support groups could work together very well with them.

Workers at the Sexual Assault Centre were aware that they are often accused of "coaching" the victim for trial. They felt this accusation to be unfair:

they do not tell victims what, or what not to say. They do explain the adversarial process, so that the victim will not feel personally attacked during cross-examination.

Physicians interviewed indicated that 50 per cent to 75 per cent of sexual assault victims are accompanied to hospital by a police officer. If the patient is not accompanied by a police officer, the physician asks if she has reported the incident to the police and "if not, if they want us to report it." One physician said, "I would notify the police if she were going to press charges or if the victim is traumatized emotionally or physically." All doctors said that this pattern has changed in the past five years. "We are seeing more patients brought in to emergency by police. I have no idea why; it used to be parents or friends or relatives that brought them in." There is no protocol within the hospital and there is variation among the physicians in judging the degree of priority that sexual assault victims receive. This ranged from a purely medical judgment to others which took the patient's emotional state into consideration. There is also no policy to report to the Sexual Assault Centre, but most personnel in the Lethbridge Emergency Medical Services would report to it, especially if the sexual assault examination kit were used. Doctors were asked their opinions on the relative use of the sexual assault examination kit over the last five years. Their belief was that the proportion of use has increased.

7.0 SUMMARY

In both time periods, most of the complainants who reported offences to the police were female, although the percentage of male complainants rose significantly in the post reform period. Almost all of the accused reported to police in both time periods were male and juveniles comprised only a small proportion of accused.

There were substantially more child complainants in the post reform period and the trend for ages of complainants to decrease in the post reform period was consistent with the Sexual Assault Centre (SAC) data.

Significantly more of the post reform assaults involved parents or others who were known to the complainant. It is difficult to determine whether the increased number of child sexual assault cases being reported has been influenced by the legislation or whether it reflects a broader social concern with reporting child sexual abuse.

Offences typically occurred in the home of the accused or complainant, although more assaults occurred in a public place in the earlier time period. There were considerably fewer strangers in the post reform period. Although this difference partly reflects the increased number of child sexual assault cases being reported to the police since 1983, even for adult complainants there was a decrease in the proportion of "stranger" assaults in the post reform period.

These findings suggest that since the law reform, complainants are more willing to report assaults that are not stereotypical. It is difficult to separate the social effect from the legal impact, but the courts are undoubtedly processing more of these cases. The same pattern of victim-offender relationships was seen in the SAC data. There was a decrease in police cases involving intercourse in the post reform period, while touching, fondling and grabbing rose during this period. The decrease in genital intercourse in 1984-1985 may be a result of the shift from rape to sexual assault in the Criminal Code, which reduced the emphasis on penetration in defining a sexual assault. It also reflects the larger number of child complainants in the post reform data, as children were more likely than older persons to be victims of touching, fondling and grabbing.

For police cases, physical force was used less often in the post reform period and a smaller percentage of victims were injured in that group. Less than half the complainants in the post reform period sought medical attention than in the pre reform period. The most common form of physical force used was grabbing and restraining.

The decrease in physical force and injury in the post reform period could be due to a relaxation of the corroboration requirement to prove that an offence took place. Hence, more cases would be reported in which the complainant suffered no visible injury. It could also be a result of the larger number of children, in the post-reform period, who were also less likely to be injured. When both these variables were examined separately for children and adults, there was still a decrease in 1984-1985 for both groups.

The number of sexual assault cases reported to police is increasing. Prosecutors and defence lawyers also confirmed an increase in cases being reported. It was suggested by police that victims are more willing to report. Police added that the reporting of "old" incidents is new, as in the phenomenon of runaways who are frequently assaulted but who usually do not follow through with their complaints.

Although more cases are proceeding, there is striking similarity in police processing of sexual offences between the pre and post reform periods. Almost identical proportions of accused were identified and arrested. A similar percentage of cases were terminated at the police level, with almost identical proportions terminated by the police and by the complainant.

Police felt that the new legislation has made some aspects of investigation easier; for example, there was no longer need to present "proof of penetration." Although proof of penetration has lost a great deal of its previous importance, prosecutors felt it was very important as corroborative evidence, especially where there was complete denial by the accused. Defence lawyers commented on the vast increase in sexual assault cases that do not involve intercourse. The increase in male victims in (1984-1985) police files could be a result of a change in the designation and definition. Police also thought the three levels of sexual assault made it easier to lay a charge.

According to all police respondents, the law has made a lot of difference. Prior to Bill C-127 police would not have proceeded with many cases that are dealt with now. Still, the notion of "recent complaint" remains very important, since evidence "disappears" over time.

The crown attorneys acknowledged that there was public pressure to proceed even with weak cases. There was disagreement among prosecutors in defining "sexual assault" and there was no consistency in their definitions of "bodily harm". Prosecutors felt that "recency of the complaint" remains an issue. Although it is no longer a requirement, it often creeps into trials and when it doesn't, some crown prosecutors suggest that it ought to be brought back as an option. It was felt the crown attorney should be able to lead such evidence because it used to be allowed in as an exception to the hearsay rule and is often the key to a complainant's evidence.

Defence lawyers thought there had been an observable difference in the number of "old cases" coming forward, particularly of the familial type, but they also felt that lack of recent complaint could harm the crown attorney's case.

Prosecutors still considered corroboration very important, "As with any criminal prosecution, if you can get it, it improves the chances of success." Defence lawyers saw the change regarding corroboration as making their job more difficult. However, they still saw lack of corroboration as somewhat damaging to the crown attorney's case.

Some of the monitored cases indicate that the law has resulted in change. There is also some evidence that change is seriously limited by former attitudes and practices. For example, in spite of the restrictions on questioning about recency of complaint, complainants were routinely questioned about delays in reporting. At the same time, however, the law enabled some older cases to be prosecuted that likely would not have been brought to court prior to the abrogation of recent complaint. It is important to note that although the cases were prosecuted, the crown attorneys were unsuccessful in getting even one conviction at trial. In the file study, however, we found that the percentage of cases found guilty at trial increased in the post reform period, so the likelihood of successful prosecution was greater following Bill C-127.

The victim's experience on the witness stand may have improved somewhat since Bill C-127 was passed. During the court monitoring component of the study, no questions were attempted by defence counsel pertaining to a complainant's past sexual history. This is likely a factor in the appearance of three prostitutes in the post reform period as well as two convictions obtained in which there was "evidence of bad character" of the complainant. There were no prostitute complainants nor convictions in these circumstances in the prereform period.

Most victims interviewed were not happy with the treatment they received from the criminal justice system. Even though they felt they were badly treated, they blamed the system and/or its personnel rather than the legislation and three of the five victims said that regardless of the outcome, they would still recommend that other victims report sexual offences to the police.

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